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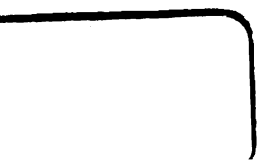
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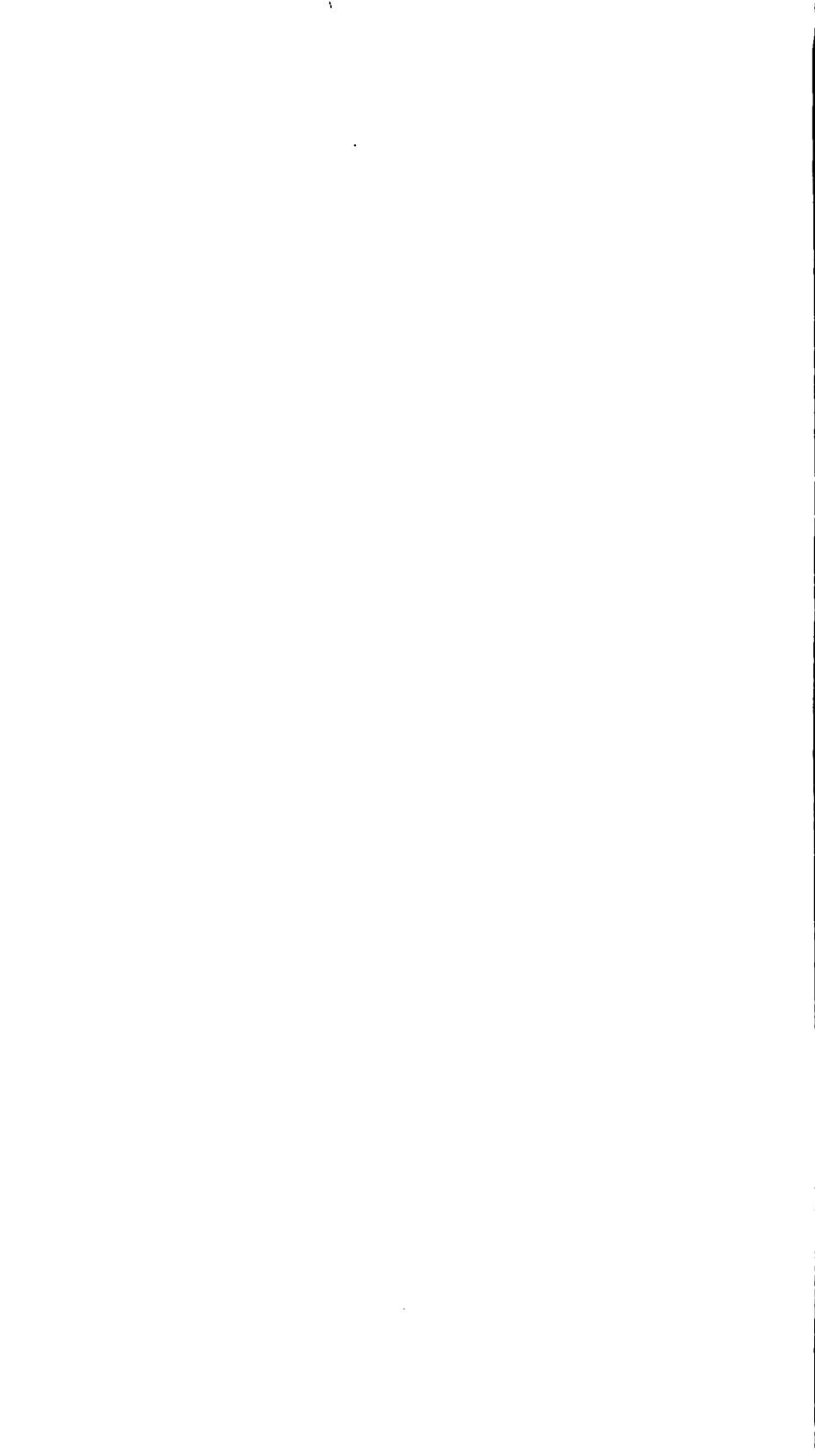
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VOLUME II.

*H. S. C. - Class 66.*

NEW YORK:  
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LAW BOOK PUBLISHERS.  
1882.

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*New York, October 20, 1882.*



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# REMARKABLE TRIALS.

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## THE ROSENZWEIG TRIAL.

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THE TRIAL IN NEW YORK CITY OF JACOB ROSENZWEIG, ALIAS "DR." ASCHER, CHARGED WITH PRODUCING THE DEATH OF ALICE AUGUSTA BOWLSBY BY MEDICAL MALPRACTICE.—ABORTION.—HER BODY PACKED IN A TRUNK AND CHECKED FOR CHICAGO.—SUICIDE OF HER LOVER.—TESTIMONY OF HER MOTHER.—CONVICTION OF ROSENZWEIG.—TERRIBLE CURSE OF HIS DAUGHTER.—COURT SCENES, &c.

ON Saturday afternoon, the 26th of August, 1871, a common truck, bringing an ordinary packing-trunk, was driven up to the baggage office of the Hudson River Railroad dépôt, in New York city. A woman who was waiting there received the trunk, paid the cartman, and then proceeded to buy a ticket for Chicago, whither she had the baggage checked. There was nothing in her demeanor to attract attention, still less to excite suspicion. But when the porter began to stow away the trunks and packages in the baggage car, his attention was arrested by an offensive odor proceeding from this trunk. After consultation the dépôt officials decided to open it. This was done, and when the lid was raised the trunk was discovered to contain the dead body of a young woman, perfectly nude. For an instant the spectators stood horror-stricken and mute, and then, with reverent hands, covered up the poor crushed remains from prying eyes.

Subsequent investigations by the police disclosed a sad, but, alas! too common story. It was ascertained that the poor girl's name was ALICE A. BOWLSBY, that her family resided in Paterson, New Jersey, and that she had come to New York to seek the aid of an infamous quack doctor in concealing the evidence of her fall from virtue. A young man who is supposed to have been too intimate with the dead girl committed suicide rather than be questioned in court in regard to his share in bringing her to ruin and death.

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#### THE TRIAL.

The trial of Jacob Rosenzweig, the abortionist, in the revolting trunk sensation, for causing the death of Alice Augusta Bowlsby, of Paterson, N. J., was commenced on 1871, at the General Sessions, before Recorder Hackett. Long before the hour for the opening of the court people commenced to assemble in the halls and about the passage ways of the "brown stone building;" but, as on former occasions, when important and grave trials were in progress, a strict guard was kept at the doors, and no one was permitted to pass into the court room before undergoing the searching scrutiny of Captain McCloskey's deputies. Every particle of available space was, however occupied, and the most intense interest was manifested in the proceedings on the part of those present.

The prisoner Rosenzweig, was brought to court in the prison conveyance at half-past ten o'clock, and was quickly hurried up the stairs and into the apartment devoted to persons charged with crime. He looked as usual, but his massive frame shook and his countenance paled with the exertion of ascending the two flights of stairs leading to the General Sessions.

District Attorney Garvin was on hand, wearing his usual imperturbable exterior, while Assistant District Attorney Sullivan sat beside him to assist in the prosecution. On the bench with the Recorder sat his colleague, Judge Bedford, who, by his fearless action against abortionists, and his prompt punishment of those notorious scoundrels "Doctors" Lookup

Evans and Wolf, has not only raised himself high in the estimation of every right-minded person, but has also obtained the most complimentary endorsements from the various medical faculties throughout the country.

Just previous to empannelling a jury, Mr. Hummel for the defence, arose and made a harangue to the Court, stating that his partner, Mr. Howe, was indisposed, and could not be present to conduct his part of the trial, which from the gravity of the charge, and the peril in which the prisoner stood, was absolutely necessary. He therefore prayed that an adjournment might be ordered for a few days, to give Mr. Howe time to recover sufficiently to put in an appearance.

The Recorder denied the motion. He had informed Mr. Howe that the case would be set down peremptorily for to-day, and that was perfectly understood by the invalid. The case was then ordered to proceed. The Court offered to assign counsel to assist the youthful barrister if he so desired, but the offer was declined, as he did not think any assistance would be required to-day (Wednesday), and probably by Thursday his associate would be convalescent and therefore able to resume his duties.

The empannelling of a jury was then commenced. The first juror called was Thomas Revel, a dry goods dealer. He was found to be so inebriated that he was immediately excused by the Recorder. The task of selecting a jury after this was continued, but the proceedings were very tedious. After two hours and a half of monotonous examination of candidates for jurors the following gentlemen were selected and constituted the arbiters of the fate of Jacob Rosenzweig:

Maurice Manitok, cigars, No. 550 Eighth avenue.

William Rane, tailor, No. 24 West Eighth street.

Thomas McPherson, builder, No. 599 Third avenue.

John Dewhurst, plasterer, No. 1,266 Broadway.

Julius Rockwell Fay, speculator, No. 56 West Tenth street.

David Morse, broker, No. 61 Catharine street.

Robert Greenthal, hatter, No. 769 Eighth avenue.

Solomon W. Albro, grocer, No. 210 West Eighteenth street.

Charles E. Pinkney, broker, No. 125 East Seventeenth street.

Charles Baldwin, agent, No. 691 Sixth avenue.

Philip D. Plunkett, dry goods, No. 200 Grand street.

The last juror was called at half-past two. He was the eighty first called out of ninety-five. The counsel for the defence had exhausted the five peremptory challenges allowed him by law; nevertheless he objected to the juror, and the question of his impartiality was referred to the sworn triers, who decided the juror was competent, and he was duly sworn. His name was John L. Deen, tobacco, Sixth avenue and Thirty-eighth street.

At this stage the counsel for the accused moved for an adjournment until next morning.

District Attorney Garvin said it would be desirable to adjourn until ten o'clock next morning, an hour earlier than usual, and as the prosecution had a strong case, he thought it might be terminated during the day. The adjournment was so ordered. The jury were kept together during the night, in the custody of Captain McCloskey, and no person was permitted to approach them.

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#### SECOND DAY.

A large crowd of would-be sight-seers congregated outside the court room, but were not permitted to witness what was taking place within. Mr. William F. Howe, the prisoner's counsel, who was indisposed the day before and could not appear, was early on hand, looking all the better for his brief attack of illness. His junior associate sat beside him, while at the left hand side of both, the principal in the trial, Rosenzweig, sur-named the man with the colossal cranium, occupied a seat. District Attorney Garvin was in attendance, and sat composedly interweaving his fingers, while his able assistant, Alger-non S. Sullivan, was leaning back on a chair reflecting the light of his brilliant orbs on the frontispiece of his associate Garvin.

Recorder Hackett surveyed the entire scene from the elevation of the bench, and listened attentively as the District Attorney prepared to deliver his opening address to the jury, who were in their places shortly after the court room was opened. The horrible trunk, in which was packed for transportation the remains of the unfortunate Miss Bowsby, was brought into court, and kept to be put in as evidence against

the accused. It is an ordinary sized trunk, and apparently almost new. It was tied round with a rope, the same as when its contents were inspected at the depot of the Hudson River railroad. Of course it was the object of curiosity and scrutiny.

At a quarter past ten ex-Judge Garvin arose and proceeded to address the twelve men sitting in judgment on the wretched prisoner. He briefly recapitulated the enormity of the crime charged, and stated to the jury what he expected to prove on the part of the people. They, the prosecution, would prove that the deceased left her aunt's house in Newark on the 23d day of August, 1871, and that she entered the dark fearful den of the accused. They would also prove that she was never seen alive after entering this den. Her body was afterwards sent from the house in the trunk, then lying under the stenographer's desk, but none of her clothing was found upon it. They would be able to show by the medical testimony from what cause Miss Bowsby died.

*Mrs. Bowsby*, the mother of the unfortunate Alice, was called as the first witness for the people. She was attired in deep mourning. She stated that her name was Caroline Bowsby; she was the mother of the deceased, Alice Augusta Bowsby; the last time she saw her daughter alive was on the 23d of August last; she resided in Paterson, N. J.; she last saw her daughter at the house of a Mrs. Williams in Newark; her daughter went to Mrs. Williams' house to attend that lady's husband, who was unwell; the deceased left Newark on the 23d of August to come to New York; this was the last time she saw her child alive.

Here the witness briefly described the apparel of her daughter on the day she left Newark to come to this city. After which she continued:—She, the deceased, also had a handkerchief with her, marked "A. Bowsby," and a small basket containing some little trinkets; I never heard anything from or of my child after she left Newark until the body was recognized by Dr. Kenny at the Morgue; the deceased had a mole on the left side of her neck and a vaccination on her left arm just above the elbow; on the left side of her jaw there was a scar caused from an ulcerated tooth which had broken off; there was also an eye tooth missing on the right side of her mouth.

Here the attire of the murdered girl was still more particularly described, but which, being unimportant to the reader, we omit. At the conclusion of this testimony the counsel for Rosenzweig proceeded to cross-examine.

The Witness—I did not see the handkerchief my daughter took away with her on the 23d of August; I know all her handkerchiefs from the mark "A. Bowlsby;" she wore a false bosom, or pads, at the time of leaving Newark; the bosom was the same as very many ladies wear; Alice was the eldest of my children; her age was twenty-five; I did not feel able to go to the Morgue to identify the body of my child, and I thought there was evidence sufficient without my going.

In reply to the District Attorney—There was a young gentleman who used to keep company with my daughter; his name was Mr. Walter Conklin; he died on a Thursday; I don't remember the date; he committed suicide by shooting himself; he used to frequently visit the house; I do not know whether they were engaged or not.

*Miss Carrie Bowlsby*, the sister of the deceased, was next placed upon the stand—I am the sister of the deceased, Alice; she was somewhat more slender than myself, but taller; my height is five feet six inches; I last saw my sister on the 22d of August, the day before she left. The witness identified the stencil plate that was shown her as the one belonging to and used by her sister in marking her handkerchiefs. She generally corroborated the testimony given by her mother. She recognized the pads shown as the ones made by her sister out of material belonging to a dress.

*Jane Johnson*, the servant girl of the prisoner, was placed next on the stand.—Have lived with Dr. Rosenzweig; the house was, I think, No. 687 Second avenue; I was doing house work in the doctor's house; I left his service on the 29th of August; about the time of the trunk trouble, the parties living in the house were the prisoner and his wife, her four children and myself; there was a young girl also; she was not living there, but she used to be there a great deal; her name was Nettie; I don't know her last name; there was a young man also who boarded there; his name was Abraham Stigler; the deceased came there with the prisoner on the 23d inst.; she was attired as the previous witness described; she came after dinner; I saw her going up-stairs; the doctor, I think,

went up with her; he first went through the basement and opened the hall door and let the deceased in; I saw her going up the second flight of stairs; I never saw her after; on Friday morning I was sent by Mrs. Rosenzweig to her mother-in-law, in Bayard street, to get some meat cooked for Saturday; I was away until eleven o'clock in the morning; I know that the woman called Nettie knew that the woman in white, the deceased, was in the house.

The trunk was here shown. The witness said she either saw that trunk or one like it in the kitchen previous to the visit of the deceased. Several blankets, quilts and pieces of muslin were shown, but the witness only identified one article as having been seen in the house; subsequently she recognized a piece of muslin. I heard that the lady in white was a patient of the doctor's; I heard it from Rosie, the prisoner's daughter; the trunk that looked like the one shown in court, belonged to the woman Nettie, who so often visited the house.

On being cross-examined she said that she did not hear any unusual noise or stir about the house on the days or nights prior to the 23d of August; I knew that Mrs. Rosenzweig was confined; there was some little excitement in the house at that period.

*William Pickett*, 471 First avenue, the cartman who was hired to carry the trunk to the Hudson River depot, testified that on Saturday, the 26th of August, he took a trunk from the house of the prisoner; a young woman came to his stand and wanted him to take a trunk from Thirty-seventh street and Second avenue to the Hudson River depot; he offered to charge a dollar, and after some disputing about the charge they struck a bargain; he took the trunk from 687 Second avenue; this same woman, accompanied by a boy, whose name he afterwards heard was Potts, met him at the depot when he arrived there with the trunk; a man opened the door and I told him that I called for a trunk to take to Twenty-ninth street; the man then took hold of one end and helped to lift the trunk on the cart; that is the trunk (pointing to the one in court), and that man (pointing to the prisoner, Rosenzweig), is the man that helped me to carry the trunk; he is the man; he never spoke a word; when we arrived at the depot the boy assisted me to set the trunk on the counter,



to get it checked; afterwards the woman helped also; she looked at the lock on the trunk and said she was afraid it would not hold; a strap was then put round it, for which the woman paid a dollar; I then went away. The witness recognized the boy shown him in court as the one who helped him with the trunk at the depot. In continuation—I heard of the case the next day, Sunday, and also heard that Mr. Brennan of Bellevue Hospital was inquiring for the cartman who took the trunk; I immediately went to see Mr. Brennan and told him all about it, and pointed out the house to him.

Q. Now, you didn't know there was a dead body in that trunk? A. If I did I wouldn't have taken it. (Laughter).

The witness was cross-examined at considerable length, but it failed to shake his evidence.

*Alexander Potts*, the boy who assisted in carrying the trunk into the depot, was placed on the stand. He testified as follows;—I live at 429 Eighth avenue; I have four brothers and four sisters; I carry baggage for a living, and remember being on Thirtieth street on Saturday, the 26th of August; I met a woman on that day; she came in a cab; I recognize the cartman; the woman asked me if I knew anything about the trains; she came ten minutes before the man with the truck; she bought a ticket for Chicago at half-past four; I would know the trunk I helped to carry to the depot if I saw it.

Q. Is that the trunk? (The trunk in court was here shown the witness). A. Yes, sir; that is the trunk I saw; the baggage man checked the trunk for Chicago, and gave her a ticket for the same place; I afterwards saw the trunk opened, and saw a naked dead body; the body was squeezed in the trunk; the body was lying on its side and doubled up; the trunk with the body was taken from the depot at eleven o'clock at night; I don't know whether it was officer Murphy or not who took the trunk.

*Peter Murphy*, a police officer, sworn:—The baggage master called my attention to a trunk lying outside on the platform; we opened the trunk and found the body of a woman wrapped in some blankets and other things; I reported at the station house and then delivered the body at Bellevue Hospital.

*David O'Brien*, assistant keeper of the Morgue, recollected seeing the body in the trunk; the trunk now here is the one I

received; the body and trunk were locked in a room; the body was placed in a coffin; the body was pretty badly decomposed, but any person who had seen it when alive could recognize it from the features; the lower extremities were in better condition than the face.

*Robert Vandervort*, sworn:—He is the baggage master at the Hudson River Railroad; the contents of the trunk smelled so that I had the trunk opened, when I first saw a foot, and afterwards found the body. He corroborated the previous testimony as regarded the destination of the trunk being Chicago.

*Thomas S. Brennan*, warden in Bellevue Hospital, identified the trunk as the one that was brought to the dead house; Drs. Henry and Parker examined the body twice; they had a photograph of the deceased.

*Dr. Theodore Kinne*, of Paterson, sworn. I examined the body at the Morgue; identified it as the deceased by the scar on the right side of the cheek, the mole on the left of the neck, and by the vaccination mark on the arm; I saw all these marks on the person of the deceased when she was alive.

*Dr. Joseph F. Parker* was the next witness. He said he was a dentist at Paterson; knew Miss Bowsby, and accompanied Dr. Kinne to the Morgue when they identified the body as being that of Miss Bowsby; he saw the mark of vaccination, the mole, and the cicatrix formed by an ulcerated tooth on the right side of the lower jaw; he found the eye tooth gone, broken off, which he had seen about two months before in the mouth of Miss Bowsby, whose dentist the witness had been for five years; about two years since he filled the tooth, and believed it to be his filling.

*James F. Boyd*, an undertaker, doing business at 336 East Thirty-fifth street, testified that on the Saturday morning before the body was found at the depot, the prisoner Rosenzweig came to him and said that a servant girl of his had died, and asked how much it would cost to bury her; witness asked him where she was, and the prisoner replied, "Not far away from here," but he did not state where; he said she was very poor, and had about \$10; he asked the witness what it would cost to bury her in the very cheapest manner; witness asked him where he wished to have her interred, and the prisoner said he did not care; that the cheapest place would do him; witness said that Evergreen Cemetery was about the cheapest;

the prisoner asked him if he could take the body of this girl to his store, and he told him that he could not ; that he (the prisoner) would first have to get a certificate from the doctor ; the prisoner said the doctor lived away down town ; he went out and said he would call again ; about two hours afterwards the witness was returning from his stable and saw the prisoner standing on the sidewalk, opposite his (Rosenzweig's) house, in Second avenue, talking to a gentleman ; the prisoner never returned to the store.

*Officer Larue*, testified that he went with Pickett, the carman, to Rosenzweig's house in search of the girl who had charge of the trunk at the depot, but could not find her ; on Wednesday the 30th of August, the officer searched for clothing, and found a stationary wash tub in the back basement of the prisoner's house, a handkerchief marked A. A. Bowlsby, with a lot of children's clothing and ladies' wearing apparel ; Sergeant Randall found a blue sash in a bureau drawer upstairs, and also some jewelry—two ladies' watches, chains, breastpins and rings—which were returned to Mrs. Rosenzweig.

*Officer Randall* testified, that he found a blue sash, and also the false bosom, which he marked at the time ; the bosom he found in a barrel of old clothing in the kitchen ; part of a bloody chemise and a skirt were found in the cellar, covered over with dirt.

*Pierre C. Richards*, a house agent, was sworn to establish the fact that Rosenzweig had lived in the house 687 Second avenue since the 1st of May.

*Dr. Joseph Cushman* testified that he made a post-mortem examination of the body of Alice Augusta Bowlsby, at the Morgue, on Sunday, the 27th of August ; Mr. Baldwin, a reporter for the *Herald*, was the only person present ; David O'Brien showed him a blanket, a quilt and a trunk ; the trunk now shown seems to be the one ; the inside measurement of it was 31 inches long, 17 inches wide and 14 inches deep ; the body was five feet three inches long, and well developed ; the hair was blonde and the eyes blue ; there were no external marks of violence ; the face, neck and shoulders were somewhat decomposed, but the lower limbs were in a fair state of preservation ; the inner coating of the abdominal cavity showed evidences of inflammation ; the womb was enlarged,

measuring six inches long and four inches in depth ; the doctor found the mouth of the womb open, and on the posterior wall a surface of one and a half inch was roughened, having the appearance of placental attachment : he then examined the neck of the womb, and found extending from the external orifice a laceration of the mucous membrane, or inner lining of the womb, and several large blood-vessels had been torn across in this laceration ; he found evidences of inflammation within the womb, and also some fibres separated from the surface of the neck of the womb, as if the laceration had almost gone through ; the left ovary contained a well-marked *corpus luteum*, or yellow body, which he considered the *corpus luteum* of pregnancy, in contradistinction from that of menstruation ; the womb had all the appearance of having recently discharged a foetus ; the other organs appeared to be healthy. In the doctor's opinion death resulted from metro-peritonitis caused by an abortion.

The cross-examination of this witness had not finished when the hour named by the Recorder for adjournment had arrived.

The court then adjourned till the next morning, at ten o'clock.

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#### THIRD DAY.

The court opened at ten o'clock, pursuant to adjournment.

His Honor conducted the case during the day with all his well known calmness and ready ruling on points of law, in which Recorder Hackett is unexcelled. City Judge Gunning S. Bedford, also the terror of abortionists, occupied a seat next the Recorder on the bench, and remained the entire day, apparently deeply interested in the legal questions ruled upon by his learned colleague.

After the cross-examination of Dr. Cushman, commenced on Thursday, was finished,

*Dr. Finnell* was examined by the District Attorney, whose testimony went to corroborate that of Dr. Cushman.

## THE DEFENCE.

William F. Howe, the indefatigable counsel for Rosenzweig, then proceeded to open the case for the defence, and in an argument at some length said that the crime imputed to the prisoner was fiendish in the extreme, and might well be hurled back against those who had charged him with a fiendish crime—a crime so full of revolting circumstances that humanity must shrink at it aghast. It was not the wish of counsel to uphold so hideous an act, but before a verdict of guilty against a human being could follow on such a charge, evidence ought to be adduced to fasten the crime on the party accused; and it was not for the jury to say, "You are responsible for the death of the murdered girl," without the testimony warranted the finding that the prisoner positively committed the acts imputed to him. Mr. Howe dwelt at great length on the evidence of Dr. Cushman, whom he claimed had failed to make it clear that any abortion had been committed; said he would, link by link, dispel the chain of evidence which the prosecution had already woven around Rosenzweig, and which certainly demanded explanation; prove the real state of facts connected with the handkerchief and sash, and also reveal the mystery wrapped around the case by the undertaker; and after this had been accomplished he would ask a verdict in favor of the prisoner. Great attention was paid to Mr. Howe's remarks, which seemed to have a perceptible effect upon all in court.

*Drs. Garrish and Parker* were called for the defence and gave testimony upon some technical questions on obstetrics, that served very little to elucidate the main point at issue.

*Mrs. Yetty Fox*—Cross-examination continued:—Nobody came into the room while I was there. (Witness was here shown the trunk, and asked if she ever saw it before.) No, I never saw it before; I don't know who it belongs to; I did not see any other woman in white enter the house; I think the prisoner went down the stairs and went out; I heard him going down stairs; I don't know whether the pedler who boarded in the house was the one I heard going down stairs: my husband is at No 85 Murray street; I suppose you will find him there now, if you send; I couldn't tell who he works for, as I have never been there; I read in the newspapers

that a woman in white had visited the house ; I can't tell what paper it was that I read it in ; the overskirt of my white dress has a ruffle, the dress proper was plain ; it did not occur to me that I was the woman in white who visited the doctor's house until I was subpoenaed ; I could hear the doctor's footsteps on the stone steps, as he went out from the second story.

Mrs. Caroline Bowlsby was recalled by the defence and asked if she knew that Mr. Conklin, of Paterson, shot himself on the day of the funeral of her daughter. "Yes," was the answer.

*Mrs. Cornelia Bowlsby*, the next witness called for the defence, was a demure-looking female, aged about thirty, who said her name was Mrs. Cornelia Bowlsby ; she lived in Myrtle avenue, Brooklyn ; I am married and have six children ; one of my children is named Anna Martini Bowlsby ; she is now married ; she is sick now and not here, but was here on Monday ; she had a pocket handkerchief marked ; I visited you (counsel) at your office recently, and afterwards went to the District Attorney's office to see the handkerchief marked "A. M. Bowlsby ;" I would know that handkerchief.

The handkerchief was here shown the witness, who pronounced it the same as the one she had seen at the District Attorney's office.

It is somewhat dirtier than when I first saw it ; I should say that the letters on the corner of that handkerchief were A. M., with the M partially rubbed out, also a B, which is partially observed ; I don't know how my daughter marked her handkerchiefs ; we visited Dr. Rosenzweig's on the 7th of August, the Thursday before my daughter was married ; we had some wine at the doctor's house ; my daughter got some wine on her gloves and took them off and wiped her hands with the handkerchief ; we read of the finding of the handkerchief in the newspapers, and my daughter then said she would bet the handkerchief spoken of was hers.

Cross-examined—My husband's given name is William Henry ; my husband belonged to the Eclectic Society, and I know he was expelled from that society ; we are not related to the Bowlsbys of Jersey ; we never heard of them previous to this trial ; I did not see my daughter marking her handkerchief ; I did not make known what I knew about this handkerchief until Mrs. Rosenzweig came to my house ; that was

I think, about three weeks ago ; I did not give her any satisfaction ; I did not notice particularly, what kind of a handkerchief my daughter had at the Rosenzweig's, only that it was a very common one. (Several questions were asked of the witness, and the latter endeavored to equivocate. In fact she persistently, wilfully affected to misunderstand the queries put to her.) A man came to our house in Brooklyn just before my daughter got married, and wanted to sell some stencil plates ; he marked one handkerchief for my daughter—marked it A. M. Bowlsby ; he marked it in the hall ; I was in the basement at the time ; I know he marked it ; this was the only one that was marked.

*Jacob Cohen* examined :—I was sick on the Saturday the trunk was found at the railroad depot ; I sent for Dr. Rosenzweig, who came to me at about half-past twelve ; he sat two or three hours with me, as I was very sick.

Cross-examined—I do not recollect what date it was, but I know two or three days afterwards the doctor was arrested : I am a cigar and cigarette manufacturer ; I was sick at my house, which is some distance from Dr. Rosenzweig's house : the doctor was with me nearly all the time he staid, with the exception of going back and forth to the store in front.

*Lewis Cohen*, a brother of the previous witness, was sworn :—I recollect going for Dr. Rosenzweig to attend my brother : it was on a Saturday in the latter part of August ; I brought the doctor with me ; I brought him to my house in Pearl street ; the doctor left our home near two o'clock.

He generally corroborated the testimony of his brother, without adding anything additional of importance. .

*Mark Samuels* sworn :—I live at 47 East Broadway ; I know Dr. Rosenzweig ; the last time I saw him was on a Saturday in the last part of July.

It appeared that the above witness was not the one wanted, consequently

*Mr. M. Samuels*, of 47 East Broadway, was called :—I have known the prisoner for the last six years ; he has been attending my brother at 96 Bayard street, at the house of my father, recently ; on the day the doctor was arrested he was at my house ; this was on a Monday ; the doctor was also at my house on the previous Saturday ; I know it was Saturday, be-

cause on that day I do no business ; I left the doctor at my father's house when I left, which was three o'clock.

Cross-examined—I am positive it was the Saturday preceding his arrest that I saw the doctor at my father's house ; I saw him there about two o'clock.

*Samuel Samuels* sworn :—I am President of the Warsaw Benevolent Israelite Society.

He was asked if the prisoner was a member of his society, and whether he (witness) did not direct Rosenzweig to inquire the lowest price an undertaker would charge for a burial. The Recorder excluded the question as not at present pertinent to the case. Counsel reserved the right to recall the witness after Rosenzweig himself was put upon the stand.

*Joseph Zoll*, of 147 Smith street, Brooklyn, testified :—I have known the prisoner for four years ; I think his character is good, first class.

Cross-examined—I have heard that he was a good doctor ; yes, sir, have heard talk about him ; heard he was a fine gentleman ; have never known him to pass by any other but the name of Rosenzweig ; I lived in the same house with him for over a year in Williamsburg ; he had an office in Prince street at one time ; to my knowledge he never kept an office for the purpose of producing abortions in Amity place ; I never heard of a Dr. Bowsby in Brooklyn.

*Jacob Sheufeldt*, of 315 Twenty-seventh street, knew the prisoner ; his reputation as a doctor of medicine was good ; I do not know much about his private character.

*George Bleck* sworn :—Reside in Brooklyn or Williamsburg ; am the landlord of one of the previous witnesses, Mr. Zoll ; he heard that the prisoner was a very good doctor ; never heard anybody say anything against his character ; did not know anything about the prisoner's reputation himself.

*Henry Undrina*, of No. 211 North Sixth street, Williamsburg, knew the prisoner for the last five years ; he lived in my house for one year, and during that time he became my doctor.

After some unimportant testimony as to the reputation and character of the prisoner,

*Rosenzweig* was put upon the stand. He testified as follows :—I am a physician ; I reside at 687 Second avenue ; I graduated in Warsaw ; I came to this country in 1865 ; I estab-



lished my business in this country at 33 Bayard street, then at 48 Chrystie street, then to No. 5 Essex street, then to 15 Orchard street, then to 33 Wooster street, then to 203 North Sixth street, Williamsburg ; I remained there a little over a year ; I then removed to East Broadway ; I forget the number ; it was between Rutgers and Pike streets ; then at 105 First avenue ; I at one time passed under the name of Ascher ; this was at 48 Orchard street, with Dr. Kisill ; I know the Bowlsbys, of Brooklyn ; I have known them about six or seven months ; I never did know the Bowlsby's of Paterson ; I have heard all the testimony that has been given in this court ; my wife and daughter are in court ; I have a baby fourteen weeks old ; my wife was delivered of that child just five weeks before my arrest ; this happened in Second avenue ; I attended my wife myself ; I had sent for a physician, but before he arrived it was all over ; the evidence of my wife's delivery—that is the soiled clothes, &c.—were put in the cellar of my house ; on the Thursday preceding the Saturday spoken of so much I met the girl Yetty, who was on the witness stand ; my wife was sick at the time ; I went down the lower way, got the key of the door of an apartment on the second floor, and then let her in through the hall door ; she came for some advice, and I advised her and left the house half an hour afterwards ; there was no other woman in white came to my house except this Yetty Fox ; I never saw the carman at my house ; the first time I saw him was at the Eighteenth precinct station house ; on Saturday morning I went to the undertaker's, upon returning from seeing a patient, and asked him how much he would charge to bury a corpse, as I wanted to report the price ; he told me the price, but I do not remember it ; Mr. Samuels, the president of the society, deputed me to find out the cost of burials, and I belong myself to another society, where they have a quarrel about undertakers ; I never saw the handkerchief which has been spoken of as being found in my house, and I never saw the trunk (looking at it) there ; I have trunks at the house ; I did not perform an operation upon Alice A. Bowlsby any time in August, and no woman died in my house about that time.

To the Recorder—I do not know a young man named Concklin ; never knew a young man to come from Paterson to employ me or to make arrangements for the boarding of any patients.

To the counsel—My daughter Rosa wore a blue scarf.

Rosenzweig was cross-examined at great length by District Attorney Garvin, who, in his calm and imperturbable way, elicited several very important facts. He said his house in Second avenue was of shaded marble, and an English basement one; he was thirty-nine years old; lived in Orchard and Wooster streets, then in Williamsburg, and afterwards in Amity-place, associated with Dr. Ascher, who rented the room; after he (Ascher) left, he (the prisoner) rented the room for two years and advertised in several papers under the name of Ascher; he did not know Dr. Woodward and never said in Woodward's presence that Dr. Jacoby got a gold watch for a fee and did not tell him anything about it; never saw the girl Nellie Willis in court, at No. 3 Amity place, within a year or two, and never performed an abortion upon her; he also emphatically stated that the undertaker's testimony was all false; that he never said anything about a servant girl being dead near by; he did not remember whether, when the undertaker was brought into the station-house, he denied having ever seen him before; he did not know a woman named Nettle staying in his house on Friday or Saturday nights, and when Jane Johnson swore to that, she testified to what was not true; after he returned from the undertaker's a man named Richards was in front of the prisoner's house, and they and the landlord of the liquor saloon on the corner had some drinks; it might have been later than eleven o'clock when he (the prisoner) was talking with Richards. Before he left the stand Rosenzweig said he never performed an abortion in any place in the city of New York, nor did he know of any woman being brought to his house, dead or alive, during the week of the alleged occurrence who had any operation performed upon her.

*Albert White*, examined for the prosecution:—Received the trunk from officer Murphy, of the Twentieth precinct; placed it in the dead house; David O'Brien, connected with the hospital, saw the trunk that night; was present when the trunk was opened (identifies the trunk); there were two quilts, a piece of unbleached muslin, a small piece of carpet and a napkin (identified the contents of the trunk, as enumerated).

Mr. Howe, for the defence, was about cross-examining the witness, when the Recorder asked counsel if he denied the identification of the contents of the trunk.

Mr. Howe—No, your Honor, if their identification is established.

Q. How did the body lie? A. Nothing was under the body or round the body; the articles were all over the body.

Mr. Howe—How long after you saw the trunk did O'Brien see it? A. Immediately after; a coffin was then prepared; examined the articles that night but did not mark them; the trunk was then placed in the Morgue, in care of the keeper; no one had access to the dead-house but the keeper; it was not locked; anybody might go to the dead-house during the night, but not likely; saw the trunk the next morning; never marked the articles, but recognized them by general appearance, not by marks; am pretty certain that the articles in court are the same that were in the trunk, but would not swear to them.

To the District Attorney—Have no doubt but the articles are the same.

David O'Brien re-examined:—Recollects the opening of the trunk; was present when opened; witness opened the trunk and took out the body.

Mr. Howe—The room where the trunk was kept was locked all night; I locked the door of the room myself.

*William W. Woodward*, examined by Mr. Garvin.—Saw the prisoner once before at 179 Bleecker street, in Dr. Harrison's house; this was last spring, March or April.

Q. Did you know the prisoner before? No, he was introduced to me as Dr. Ascher.

Q. State what occurred in conversation between you and prisoner at that introduction.

Mr. Howe objected. Overruled.

After the prisoner came to Harrison's office he wanted to send out for refreshments, but Dr. Harrison would not permit it; Harrison asked Ascher how he had settled that matter between himself and Dr. Jacobi, alias Franklin.

Mr. Howe—State now only what you know.

Witness—Harrison asked how he (prisoner) and Dr. Jacobi, alias Franklin, had made out about that woman; Ascher replied that he had received \$56, and that they had divided that sum between them; but afterwards learning that Jacobi, alias Franklin, had also got a gold watch in payment, he (Ascher) had demanded it and had got it.

The witness wilted under Mr. Howe's cross-examination, admitting that he was engaged in doing nothing, was private secretary to Harry Hill, a correspondent of the *Police Gazette*, &c., all which honorable occupations he had seemed to have surrendered. Little importance was attached to the evidence of this party.

*Nellie Willis*, examined by Mr. Garvin.—Knew the prisoner; saw him at No. 3 Amity place; knew him as Dr. Ascher; went to him to perform an operation.

Mr. Howe objected. Objection overruled.

What occurred? He performed an operation on me with instruments; was gone three months and a half; on the second occasion applied to him, and he wrote me a prescription; told me to come to his house on First avenue; was to have called at three o'clock; did not go; was taken suddenly ill and had to go to the hospital.

Cross-examined by Mr. Howe.—Do you mean to say you went to have an abortion performed on you? A. Yes; I went to that man; fainted while undergoing the operation; was not married at the time; live at No. 162 Wooster street, with Josephine Patterson.

"What is your business?" "Nothing; I have got a furnished room."

Witness, on further examination, neither did good for herself or her cause.

This closed the testimony.

Mr. Howe, who was apparently fighting the case of his client under physical difficulties, addressed the court and asked its indulgence for half an hour. The Recorder quietly said, "We will give you till to-morrow, at ten o'clock, to refresh yourself, Mr. Howe."

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FOURTH DAY.

On the opening, the court was crowded to the doors, and a great many prominent citizens occupied seats inside the bar enclosure. Rosenzweig's wife and daughter were in court long before the hour of opening proceedings, and sat awaiting the result in the witness box. The Bowlsby family of Pater-

son were not present, but the Mrs. Dr. Bowlsby, of Brooklyn, whose husband is an expelled physician of the same college from which Rosenzweig obtained his bogus diploma, was with Mrs. Rosenzweig and her daughter Rosa. At 10 o'clock Rosenzweig, mute and cool as ever, was placed at the bar; Mr. Levy, the Bowery pawnbroker, true to the core, sat down beside him, and Recorder Hackett, with whom Judge Bedford was seated on the bench, said to the senior counsel for the defence, "Proceed, Mr. Howe." Mr. Howe rose and said:

"May it please the court, I now move that the District Attorney prove that Alice Augusta Bowlsby was alive in the City of New York on the 24th day of August. He has only proved that she was in New Jersey alive. I also move for a verdict of not guilty at this stage on the ground that it has not been proved that, supposing even an abortion had been committed, and on the person of Alice Augusta Bowlsby, such a proceeding was not necessary to preserve the mother's life."

The court overruled both motions, granting exceptions in each case, and then Mr. Howe rose and made

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#### THE SPEECH FOR THE DEFENCE.

Mr. Howe congratulated the court and jury on the approaching end of the case, and begged of the latter to let no false-created prejudice, formed of sensational reports in public newspapers, affect their minds against the true and just rights of the prisoner. No term too strong—no epithet too vile to be applied to him—had been applied to the man who awaited judgment at their hands, by the public press. They were not to be biased by these articles; their duty lay wholly within the consideration of the evidence adduced in the case, and not a tithe of an inch beyond. Although the press had in advance condemned his client, the learned counsel contended that he was to all true intent innocent of the charge preferred. The District Attorney's argument was powerful, but he had failed to establish his facts. He had failed to show that the man he had denounced as a fiend, as a monster—a man who turns out to be a physician of honesty and integrity—was guilty. The

first witness was Mrs. Bowlsby, who testified she was the mother of deceased. Here arose a grave question, for they contended that the body found was not that of Alice Augusta Bowlsby. Could they say they had no doubt? Why they must. Her mother had a doubt; the doctor doubted. But they tried to prove her identity by a vaccine mark and a stopped tooth, filled by a New Jersey dentist two years ago. And the mother, after all her anxiety, does not see her daughter's body, but sends a hired doctor. Would any of them have failed to go personally to ascertain if a child of theirs had been stricken down? But the prosecution said these were extraordinary circumstances. So they were; but this was an extraordinary case, and an extraordinary verdict was asked, and one based on no facts. The jury, he trusted, would demand facts. Mistakes in identity among the living were not uncommon, and sometimes were very extraordinary. He cited the case of Martin Guerre, who was substituted in his home by one Arnold Du Sil, and who, on the trial which occurred between them, was almost defeated by the impostor. Here they had but the scar of decomposition and the filled tooth against the living man. He also cited the case of the boy Nossien, who was bled in the arm, and had besides a cicatrix on his knee, and whose godmother claimed after his loss another child, on the strength of these two marks. Also the case of Thomas Hoe, where the man accused of bigamy as Thomas Hoe, having each two scars and lisping speech, only escaped because a third scar known to be on Hoe's foot was not found on the prisoner. It was unnecessary to multiply such cases. They were men of common sense. Were they satisfied beyond doubt that the body was the body of Alice Augusta Bowlsby? That was the first potent doubt. That they must dispose of. Was there any evidence that Alice Augusta Bowlsby was ever in Dr. Rosenzweig's house alive? Mrs. Bowlsby testifies she saw her alive in Jersey. But was there the first sign of proof that she crossed the river alive? The District-Attorney pointed to the handkerchief, to the pads, to the body, but if it was her body was there any proof that it crossed the river alive? There was a haunting possibility he must get rid of. Since they dealt in theories, let him put forward a theory. What more probable than that young Conkling desired abortion to be performed. Were there no abortionists in New

Jersey? Could not the seducer have it performed there? Could not his cunning have caused him to send the trunk with her body to an advertising physician's house here? So far as the legal consequences went he succeeded, but punishment followed. Conkling the seducer, Conkling the possible murderer, to avoid exposure, shot himself. Was not this more probable than the fine-spun theories of the prosecution? But a handkerchief was found. Let him invoke probabilities. If this man has committed the crime imputed to him, he certainly would not have retained the evidence of his guilt. He would not have put the sash in a bureau drawer, nor have placed the handkerchief in the way to meet a servant's eye. A hundred people might have carried this handkerchief, and if this was an extraordinary coincidence, was it more extraordinary than the presence of the two Mrs. Bowlsbys here at the same time. The coincidence was so wonderful that he had taken pains to verify it very fully. Mrs. Bowlsby's story gave a singular coincidence, but was a full explanation of its presence. As for the identification of the pads, it was merely that they were covered with a material sold in every dry goods store. They were found with bloody garments in the basement, the most conclusive proof, if proof at all, but they didn't bring those forward, for they were accounted for. Was there one article of Alice Augusta Bowlsby's dress found—hat, shoes, jewelry—in the house? Not one article of jewelry was found. If it could have been shown to have been Miss Bowlsby's, how quickly they would have produced it, or the faintest shadow of proof. But the District-Attorney says the trunk came from the prisoner's house. And Pickett's testimony is relied on. On Pickett's testimony they could not convict the prisoner of petit larceny. Not that he was not honest, but he was impetuous, as they saw. He only believed it was Rosenzweig, a man whom he had never seen before, and it was plain Pickett had reasoned himself into his belief. Against this was Cohen's testimony that at this very time the prisoner was attending him for colic and cholera morbus. This was fortified by Cohen's brother, by Samuels and Samuel's brother. To believe Pickett they must brand these men with wilful perjury. To believe them they need only believe Pickett to have made a mistake. Jane Johnson's testimony was simply that on Thursday she saw a woman in white. Would they, to

pander to public prejudice, jump to the conclusion that this woman in white was Alice Augusta Bowlsby? Would they take suspicion for proof? If she were Alice Augusta Bowlsby, did she remain there? If she did, wouldn't Jane Thompson have known of it? There was noise and confusion when Mrs. Rosenzweig's child was born. Such things cannot be done without some noise, but they say this poor girl had an abortion committed on her, died, was stripped of her clothes, packed in this trunk, and all without noise. But she finds in this trunk a comfortable like the one in Dr. Rosenzweig's house. What was that for proof? Were there no similar comfortables? But he passed under the name of Ascher! Yes; he admitted it. He had bought out Ascher's business and kept up his name. Doing business in two places, he did not take down Dr. Ascher's name. It was only one of those fine-spun threads of prejudice with which they sought to fill the air and befog their senses. But they placed Nelly Willis on the stand. They remembered her testimony. Did they believe that had his client been guilty he would have desired to subject him to cross-examination of the very able District-Attorney? They had seen him under that cross-examination. They had seen him—and he believed in the facial test—when he opened the trunk. Had he packed the body in that trunk could he without a tremor have opened that trunk? Would he not have dreaded that the form of his murdered victim would confront him? He had boldly invited all that could be brought against the doctor by proving his character. He had nothing to hide, so Nelly Willis was let in. Was there anything in her testimony that she should be believed before Dr. Rosenzweig? But the prosecution must first prove that an abortion had been committed, and for that they must rely on Dr. Cushman's evidence; with all respect for him and his brilliant talent, we must say that in this case he could not be relied on. His lack of experience and positive ignorance on some matters made his testimony unreliable. The prisoner was charged with murder. He had a wife in court, a daughter, a little infant at home. He had a reputation dear to him. He had been good to the poor, generous, honest, and upright. This was the man they were asked to take from his family, from his work, from his charities. If they should say that they had no doubt, the scenes of the court-room would haunt them.



Doubts might and would hereafter arise, unavailing wishes that they had not done otherwise, that they had taken suspicion for proof, and had yielded to public clamor against their own convictions.

Mr. Howe's argument was listened to with the greatest attention, and affected the feelings of many in court. When he alluded to the family of the prisoner, Mrs. Rosenzweig and her daughter Rosa wept bitterly, but the same stoic brutality which hitherto distinguished the conduct of Rosenzweig, again asserted its mastery over whatever of human feeling was left, if any there was within him, and his bloodshot brown eyes did not even for a moment become moist. His dark lips were set close together, his hands were clasped, and his legs crossed. He was a piece of impassive marble, expressionless, uncaring, a murderous Memnon, awaiting the ringing of his death-knell.

District-Attorney Garvin studied Rosenzweig's face all the while, and with an expression of utter abhorrence and disgust on his face rose to address the jury. He said that the common and ordinary view of this case was that it was a great crime against life in its inception—against that which cannot be bought with gold. Property is nothing; everything that a man has, even liberty, is nothing in the scales against a man's life. All laws culminate in the protection of life, and declare that he who causelessly takes the life of a fellow-man, shall for that forfeit his own. Hence the law that for murder a murderer must die. And standing beside that statute is the law that for taking the life of the unborn child or its mother the killer shall be punished with imprisonment in State Prison for seven years. They could not know how the abortion was done. The abortionist does not take witnesses to his act; the stricken woman, knowing that every day brings her nearer to her shame, goes in secret; she may love her child, but she loves her mother, her friends, her reputation. These poor girls are born to temptation, and if she falls, what is she to do? The seducer, turning his back on her, says, "You are fallen; you are not holy enough for me;" he walks abroad with no responsibility; she, like poor Alice Bowlshy, carries with her a load which she cannot get rid of without exposing herself to the shame and renunciation of the whole world. Her family may tolerate her. The rest of

the world will reject her. And, with this coming on, day by day, she cannot tell her mother, she cannot talk to her father, she would not tell her sister. Her seducer has left her. She sees in the papers that Dr. Ascher does this business. The prisoner, for his respectable business, is Dr. Rosenzweig ; for this business he is Dr. Ascher. Her mother saw her leave Newark, saw her dress, saw what her daughter wore. Her appearance then she will ever remember. It was the last time she saw her. There was a poor widow woman without money waiting anxiously for her daughter. At last a body is found. The tears the mother shed are not known. Why should she come now, that it is useless. Is any other body shown that comes near this body ? Any other person with the scar on the cheek, the mole, the mark on the arm, the broken and filled teeth. Is any one missing who at all comes near this ? And yet, as a last desperate chance, prisoner's counsel claims that there is no proof of identity. If it isn't her, who is it ? The fact is she left Newark alive, and was found dead, and that is all. He would like to see any of the jurymen go out in the park and say he did not believe in the identity. Such a man would not be worth anything, living or dying, if he believed it. But if he said that, he would lie, and would know it. How this abortion was done, when it was done, no one knows but Alice Augusta Bowlsby and the prisoner. They must take all the surrounding circumstances, and, as in all cases of secret murder, gather out of them whether the crime was committed or not. It was easy enough for the prisoner to go on the stand and swear he never was in the house or the street. But the question recurs, how did he come by it ? Unless he explains all the circumstances, is he not foreclosed. Why didn't the prisoner explain how this trunk, how this comfortable, how this dead body came into his house ? He stood speechless. They seriously said this body was not identified. Would any one tell him who this poor girl was ? The poor mother had passed from the world. Naked she was laid on the bottom of that trunk, covered with a coarse blanket, a coarse piece of carpet, and when the news came of this identification, the man who was engaged to her, not waiting for anything further, put the pistol to his head and leaped the awful brink. And here sat the man who was the author of these deaths, and all they could do was to punish him with seven years' imprison-

ment. It ought to be murder. He wished the legislators could sit and hear this trial. Where did Alice Augusta Bowlsby go when she came to New York? Where but to Dr. Ascher's in Amity street, where Nellie Willis went. She says that he wanted her to go to his house, where she would be under his control; where he might most safely to himself imperil her life, imperil his own liberty—and all for the love of gold. Alice Augusta Bowlsby went to his house. Didn't they believe that? Did they believe that the trunk was taken away and was brought back? Didn't they believe she went to that house alive? Yes, and that she lay there perhaps a whole day and night in her dying agony, and bled to death. If she did not come there, how did they get that handkerchief? How did he get those pads? Suppose on that morning Inspector Walling had found Alice Augusta Bowlsby in that house dressed appropriately for the death, and the post-mortem proved what has been produced, you would say: What a monster! Would you doubt then? Was it not worse? Here are these articles found, and not only that, Alice Augusta Bowlsby is herself found there—not dressed for the grave, none of the ordinary preparations or observances of burial—no indication but secrecy, a badge of crime. He finds another person with it, another badge of crime. If innocent, why does he not produce that woman? The carman takes it from his house from his hands. What kind of case was this, and yet, they talked of doubts. Dr. Kinney, who had attended her, spoke of these marks, all peculiar, all taken together, all combined with the fact that Alice Augusta Bowlsby was missing, were conclusive on the question of identity. The case was so overwhelmingly strong that it seemed almost useless to say more; but there were other facts. The prisoner lived at No. 687 Second avenue; he had an office in Amity place; in one he was Dr. Rosenzweig, in the other he was Dr. Ascher; in Second avenue he was respectable; in Amity place he was a monster; in Williamsburg, to his patients, to Nelly Willis, at Amity place, and others attracted by Dr. Ascher's advertisements, he was known as a monster. Did Dr. Willard Parker bear two names? Did Dr. Parker know him as Dr. Ascher? Called on by Dr. Rosenzweig to cut off a leg he would take his fee as quickly as any one's else, and that was the extent of their association. Now that he

knew him as Dr. Ascher, he would spurn him from his house. On the morning of Saturday, was Dr. Rosenzweig at home? He says he was. He says he saw Boyle, the undertaker. Boyle says he wanted to know how much it would cost to bury a servant girl near by. Who was that servant girl? The jury must answer that question in their verdict. He was told the certificate of the physician was necessary to burial. There was the impassable barrier. There are certain things required by law, and these prevented his disposing of the body without evading the law. Take that, with the handkerchief, the trying the pads, and how could they escape finding a verdict of guilty? He said the doctor lived a good way down town. Why did he not tell who that servant girl was? There was no such doctor—there was no dead girl except Alice Augusta Bowlsby. That handkerchief was a most damning piece of evidence, and counsel tried to get rid of it, and produced, not the owner of the handkerchief, but the mother. He called attention to the fact that Mrs. Bowlsby, of Brooklyn, did not state that she saw the mark made or noticed the handkerchief, and that the stencil plate exactly corresponded in its imperfection to the blot on the mark. So important to the prisoner was this matter that had the story been true, sick or well, he would have had the owner of the handkerchief. There was Rosenzweig's daughter; she went from attic to basement five times where a man went once. Why, if this trunk, this comfortable, those blankets, were not in his house, why was she not put on the stand? Perhaps a spark of humanity lingered with this man, that spark which defends a child from moral as well as physical wrong, and the father would not call her. Perhaps her own conscience could not be brought to it. Sufficient that on this important point within her knowledge she was not called. But they say there was no proof of abortion. If there was a natural death, why was she crushed into this trunk? Why was she not coffined for burial? Why was not a certificate of death obtained? That was the general view. What was the direct evidence? The post-mortem gave all the ordinary symptoms of an abortion. All the surroundings show that violence had been used. He discussed at some length the medical evidence, and claimed that it left no doubt of the fact that a crime had been committed. He called on the jury to

show that this crime could not go unscathed, and shut the gate on this criminal. The statute protected the child in its mother's womb, the adult grown, the man in his grave. These laws stood immutable principles on the sanctity of life and the sanctity of the body. Alice Bowlsby was gone; she could not be aided. Two other lives were gone besides. The indictment was for manslaughter in the second degree. He had made out his case. If they loved their children and their families he called upon them to condemn this crime of abortion.

As District-Attorney Garvin closed his address to the jury a buzz of applause went through the court-room. Mr. Howe at once rose and asked that the evidence of the girl Nellie Willis be stricken out, as being testimony of a distinct felony against the prisoner. Recorder Hackett declined to make such a ruling, but charged several requests of the counsel to the jury in the affirmative.

Recorder Hackett began his charge by reading the statutes governing the crime of which the prisoner was accused, and then reviewed the evidence of the carman Pickett, the servant Jane Johnson, and the other witnesses for the prosecution. He gave at length the facts which caused Drs. Kinney and Parker to believe that the body was that of Miss Bowlsby. As cumulative proof that she had been in Dr. Rosenzweig's house, he called attention to the handkerchief and pads. It was for the jury to say how it was possible for those things to be translated from Alice's person to his possession. He instructed them that they must disregard Mrs. Cornelia Bowlsby's testimony entirely as mere hearsay, and commented on the singularity of the testimony, that a single handkerchief should have been so marked, and that the young lady who was said to own it was not produced. He commented on the closeness of the correspondence between the stencil plate and the mark on the handkerchief. But aside from that, how came that pad there? He had heard no testimony explaining it. The Recorder reviewed the prisoner's own testimony, and his denial of ever having performed an abortion: of his contradiction by Nellie Willis and her character. The testimony of Yetta Fox, which was that she went on a Thursday, at 2 o'clock, in a white dress, and stayed two hours; while Jane

Johnson fixed the arrival of the woman in white at near 12, and the dress described was different. The Recorder concluded his charge as follows: "The case is a sensational one as far as this community is concerned, but with that you have nothing to do. The crime of which the prisoner is accused has been practised from the formation of the world, and will continue to be practised as long as human nature remains as it is. It can only be restrained by potent legislative penalties and the vindications of the law. The poor girl's story is shortly told. Trusting, betrayed, she and her seducer sleep the sleep that knows no waking. Your duty is to calmly weigh the testimony, and render a verdict according to your oaths."

The jury then retired. The court-room rapidly thinned. Rosenzweig was taken back to the prisoner's box and locked up. His wife and daughter waited in the court-room for the news of the conviction or release. The court officers passed away the moments calculating on the time the jury would remain out, and the character of the verdict they would render. There came a rumor from the jury-room that two of the jurors would not render a verdict of "guilty;" and betting was free. But after an hour and a half's absence the jury came in, and it was at once seen by their still, stern faces that they had decided on "guilty."

Rosenzweig was put forward to the bar. Recorder Hackett and Judge Bedford ascended the bench, the District-Attorney and Mr. Vandervoort, the clerk of the court, assumed their places, and there was such a silence in the court-room that the crackling of the reporters' paper was heard.

Mr. Vandervoort—Have you agreed upon a verdict, gentlemen?

The Foreman—We have.

Mr. Vandervoort.—Rosenzweig, stand up. Prisoner, look upon the jury. How say you, gentlemen, do you find the prisoner guilty or not.

The Foreman—Guilty of manslaughter in the second degree, with a recommendation to mercy.

There was a sound all through the court-room as if all had drawn a long and deep breath. The recommendation to mercy was given to appease the two non-agreeable jurors, and Recorder Hackett knew it. Rosenzweig's wife and daughter leant forward over the railing of the witness box. On his

formal examination by Mr. Sparks, Rosenzweig said he was a physician, thirty nine years of age ; and then, in reply to the question what he had to say why sentence should not be pronounced, actually had the brazen effrontery and brute courage to stand up and say, "I am not guilty, sir," without a tremor in his face.

This took Recorder Hackett by surprise, and he shuddered. He recovered in a minute and said, "Rosenzweig, no man knows better than you that when you with a steel instrument on that Wednesday performed the abortion, the poor girl flooded until Thursday night ; that she grew better on Friday ; and that when she got up, contrary to your advice, on Saturday, the flooding came on again and she died. I have observed you during this trial. You are a man of the most desperate courage and coolness, devoid of the smallest tinge of human charity. You are a physician, an educated man, and a dangerous man. You stand to-day convicted of what, if the law was what I would wish it, would be murder in the first degree, and the punishment of which would be death. I fully agree in the views held by my colleague Judge Bedford regarding this most barbarous crime, and will unite with him in endeavoring to have the penalty on conviction be made a capital punishment. I only regret that the law is constituted as it is—constituted so that I cannot inflict upon you, the vilest of the vile, a heavier sentence than that I now impose—seven years in the State prison with hard labor."

Then there came a burst of applause, through the room, which the court officers could not suppress, and Rosenzweig was hurried back to the prisoner's box.

The court-room was rapidly cleared by the officers of all save Rosenzweig's wife and daughter, who were conducted into the prisoner's box to see him for the last time previous to his removal. Mrs. Rosenzweig cried bitterly, and said, "Oh, how can I bear this !" but the terrible passion evinced by the daughter Rosa was somewhat ghastly. This girl, petite, angular, about fourteen years of age, with a series of hysterical shrieks, knelt on the matted floor of the prison box and shrieked out, "Oh, may my God curse every one who has went against you, father ; may their flesh rot from their bones ; may their lives wither up ; may they die rotten. Oh, father, if I die for it, I'll have all their lives !" and then she clasped her arms

around Rosenzweig's neck and clung to him convulsively. But even at this, the most trying scene of all, Rosenzweig did not shed a tear. His face showed a slight trace of feeling, but no more. The officers parted them, and Rosenzweig was hurried down the stairs. Outside a crowd of about five hundred people awaited his coming. When he appeared they set up a loud shout, and hooted and hissed. The door of the van was opened, one of the officers hustled him in, and in a moment the van dashed away, bearing Jacob Rosenzweig, the convicted abortionist, to his prison home.

The conviction was reversed. See 6 Lansing's N. Y. Supreme Court Reports, 462 ; and 63 Barbour's Reports, 634.

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## CAPTAIN JOHN BROWN.

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**OLD BROWN, OF OSSAWATOMIE.—ATTEMPTED INSURRECTION AT HARPER'S FERRY.—STOPPING THE MAIL TRAIN.—COMPELLING SLAVES TO JOIN THE MOVEMENT.—HIS SENTENCE, SPEECH, AND EXECUTION.**

THE extraordinary outbreak at Harper's Ferry, in Virginia, on the night of the 16th of October, 1859, the forcible seizure of the national arsenal, the capture, imprisonment and killing of the people, and the almost immediate suppression and extermination of the insurgents, are events of historical importance. The madness of the attempt, the boldness—amounting to heroism—of the handful of men who were concerned in the movement, and especially the romantic history and personal character of the chief actor, have awakened in the public mind an ardent desire to know more of the man and his intentions. To gratify this desire, as well as to record, in convenient form, the facts concerning the outbreak and its suppression, with the trial of the leader, John Brown, we have compiled the following pages, aiming only to state the truth in all respects, according to the best sources of information.

John Brown was a member of the Republican party, but he despised the party. He was opposed to the extension of slavery, and favored political action against it. He was an abolitionist of the ultra school. He distrusted the leaders of



the Republican party, and believed their success would be an injury to the anti-slavery movement; that they would become as conservative of slavery as the Democrats themselves. Hence, to prevent apathy toward the abolition enterprise, it was necessary to strike a blow at once.

On the night above mentioned, he, with twenty-one men, took possession of the United States Arsenal, at Harper's Ferry, Virginia, and held it against the forces of Maryland and Virginia until Tuesday morning. They seized the watchman at Harper's Ferry bridge, and made him a prisoner. They took Colonel Lewis Washington and John Allstadt from their houses, made them prisoners, and compelled their slaves to join the movement. They stopped the mail train, shot the baggage-master, and delayed the train for six hours.

On Tuesday morning, upon the arrival of the United States marines, the building containing the insurgents was stormed, and after some very rapid firing from both sides, the marines succeeded in battering down the door. They rushed in and secured the leaders, and the work was done.

John Brown was severely wounded by a bayonet in his side, and presented a pitiable spectacle, and frequently, during the trial, was unable to stand unaided.

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## THE TRIAL.

### FIRST DAY.—FIRST EXAMINATION OF THE PRISONERS.

The preliminary examination of Brown and other Harper's Ferry conspirators commenced at Charlestown, Va., on Tuesday, Oct. 25, 1859, in the Magistrate's Court. Col. Davenport was the presiding justice, and the following magistrates were associated with him on the bench; Dr. Alexander, John J. Lock, John F. Smith, Thos. H. Willis, George W. Eichelberger, Charles H. Lewis, and Moses W. Burr.

At half-past ten o'clock the sheriff was directed to bring in the prisoners, who were conducted from the jail under a guard of eighty armed men.

A guard was also stationed around the court. The courthouse was bristling with bayonets on all sides. Charles B.

Harding, Esq., acted as attorney for the county, assisted by Andrew Hunter, counsel for the Commonwealth. The prisoners were brought in, Brown and Edward Coppie manacled together.

Brown seemed weak and haggard, with eyes swollen from wounds on the head. Coppie was uninjured. Stephens seemed less injured than Brown, but looked haggard and depressed. Both had a number of wounds on the head.

John Copland is a bright mulatto, about 25 years of age, and Green a dark negro, age about 30. Sheriff Campbell read the commitment of the prisoners, who were charged with treason and murder.

Mr. HARDING, the attorney for the State, asked that the Court might assign counsel for the prisoners, if they had none.

The Court then inquired if the prisoners had counsel, when Brown addressed the Court as follows :

"I did not ask for any quarter at the time I was taken. I did not ask to have my life spared. The Governor of the State of Virginia tended me his assurance that I should have a fair trial; and under no circumstances whatever will I be able to have a fair trial. If you seek my blood, you can have it at any moment, without this mockery of a trial. I have had no counsel. I have not been able to advise with any one. I know nothing about the feelings of my fellow-prisoners, and am utterly unable to attend in any way to my own defence. My memory don't serve me. My health is insufficient, although improving. There are mitigating circumstances that I would urge in our favor, if a fair trial is to be allowed us. But if we are to be forced with a mere form—a trial for execution—you might spare yourselves that trouble. I am ready for my fate. I do not ask a trial. I beg for no mockery of a trial—no insult—nothing but that which conscience gives, or cowardice would drive you to practise. I ask again to be excused from the mockery of a trial. I do not even know what the special design of this examination is. I do not know what is to be the benefit of it to the Commonwealth. I have now little further to ask, other than that I may not be foolishly insulted, only as cowardly barbarians insult those who fall into their power."

At the conclusion of Brown's remarks, the Court assigned

Charles J. Faulkner and Lawson Botts as counsel for the prisoners.

Mr. FAULKNER—I was about to remark to the Court that, although I feel at any time willing to discharge any duty which the Court can legally claim, and by authority of law devolve upon me, I am not aware of any authority which this Court has, sitting as an Examining Court, to assign counsel for the defence. Besides, it is manifest from the remarks just made by one of the prisoners, that he regards the appearance of counsel under such circumstances not as a *bona fide* act, but rather as a mockery. Under these circumstances, I do not feel disposed to assume the responsibility of that position. I have other reasons for declining the position, connected with my having been at the place of action, and hearing all the admissions of the prisoners, which render it improper and inexpedient for me to act as counsel. If the Court had authority to order it peremptorily, I should acquiesce, and obey that authority. I am not aware that there is any such power vested in this Court, but, as it is the prisoners' desire, I will see that full justice is done them.

Mr. Botts said he did not feel it to be his duty to decline the appointment of the Court. He was prepared to do his best to defend the prisoners, and he hoped the Court would assign some experienced assistant in case Mr. Faulkner persisted in his declination.

Mr. HARDING addressed Brown, and asked him if he was willing to accept Messrs. Faulkner and Botts as his counsel.

Mr. BROWN replied: I wish to say that I have sent for counsel. I did apply, through the advice of some persons here, to some persons whose names I do not now recollect, to act as counsel for me, and I have sent for other counsel, who have had no possible opportunity to see me. I wish for counsel if I am to have a trial; but if I am to have nothing but the mockery of a trial, as I have said, I do not care anything about counsel. It is unnecessary to trouble any gentleman with that duty.

Mr. HARDING—You are to have a fair trial.

Mr. BROWN—There were certain men—I think Mr. Botts was one of them—who declined acting as counsel, but I am not positive about it. I cannot remember whether he was one, because I have heard so many names. I am a stranger

here; I do not know the disposition or character of the gentlemen named. I have applied for counsel of my own, and doubtless could have them, if I am not, as I said before, to be hurried to execution before they can reach me. But if that is the disposition that is to be made of me, all this trouble and expense can be saved.

Mr. HARDING—The question is, do you desire the aid of Messrs. Faulkner and Botts as your counsel? Please to answer yes or no.

Mr. BROWN—I cannot regard this as an examination, under any circumstances. I would prefer that they should exercise their own pleasure. I feel as if it were a matter of very little account to me. If they had designed to assist me as counsel, I should have wanted an opportunity to consult them at my leisure.

Mr. HARDING—Stephens, are you willing those gentlemen should act as your counsel?

Mr. STEPHENS—I am willing that gentleman shall (pointing to Mr. Botts).

Mr. HARDING—Do you object to Mr. Faulkner?

Mr. STEPHENS—No. I am willing to take both.

Mr. HARDING addressed each of the other prisoners separately, and each stated his willingness to be defended by the counsel named.

The Court issued a peremptory order that the press should not publish detailed testimony, as it would render the getting of a jury before the Circuit Court impossible.

*Lewis Washington* stated—At about 1 o'clock on Sunday night last he was asleep, and was awoken by a noise; heard his name called; went down, and was surrounded by six men; Stephens appeared to be in command: Cook, Coppie, and two negro prisoners were along, and another white man, whom he afterwards recognized as Kagi. Mr. Washington then proceeded to detail all the particulars of his taking as a prisoner, with his negroes, to the Armory, and the subsequent events up to the attack by the marines, and his delivery.

*A. M. Kitzmiller* gave the particulars of his being taken prisoner, and locked up; he subsequently had several interviews with Brown, who always treated them with a great deal of respect and courtesy; he endeavored to ascertain from Brown what object he had in view, and he repeatedly told

him his only object was to free the slaves, and he was willing to fight the pro-slavery men to accomplish that object; on one occasion during the attack I said to Brown, "This is getting hot work, and if you will allow me to interfere, I can possibly accommodate matters;" he went out with Stephens with a flag of truce on Monday afternoon; he requested Stephens to remain while he went forward, when Stephens was fired on and fell; I recognize only Brown and Stephens; I counted only twenty-two men early in the morning, armed with Sharpe's rifles; when Stephens was lying wounded he remarked to me. "I have been cruelly deceived," to which I replied, "I wish I had remained at home."

*Mr. Washington* recalled—In a conversation with Gov. Wise, Brown was told he need not answer any questions unless he chose; Brown replied he had nothing to conceal—he had no favors to ask; that he had arms enough for two thousand men, and could get enough for five thousand if they were wanted.

*Armstead Ball* detailed the particulars of his arrest by the insurgents. I had an interview, after his arrest, with Brown, who stated that he had come for no child's play, and was prepared to carry out his designs; that his object was not to make war against the people, and they would not be injured if they remained quiet; his object was to place the United States arms in the hands of the black men, and he proposed to free all the slaves in the vicinity; Brown repeatedly said his whole object was to release the slaves; I asked him if some plan could not be arranged for the liberation of myself and the other prisoners; he said we could only be released by furnishing able-bodied slaves in the place of each; I recognize Stephens, Green and Brown; Capt. Brown told the prisoners, when the charge of the marines was about being made, that though he did not intend to injure them himself, they should equally occupy the post of danger with himself; that if they were not dear enough to their fellow-citizens to accept the terms he had proposed to secure their safety they must be barbarians. Coppie, on the other hand, told himself and friends to get behind the engines, that he did not wish to see any of them injured; one of the insurgents (Beckham) I heard say, "I have dropped him;" I did not see Captain Brown fire once from the engine house; do not think he fired once;

Green fired several times; the prisoners never were unreasonably exposed.

*John Allstadt*, one of the slave owners who was brought into the armory with his slaves, detailed the particulars of the battering down of his door, and his seizure by six armed men.

At this point Stephens appeared to be fainting, and a mattress was procured for him, on which he lay during the remainder of the examination.

*Mr. Allstadt* resumed—Thinks Brown fired several times; knows he saw him with a gun levelled; saw all the prisoners, except the yellow man Copland.

*Alexander Kelly* detailed the particulars of the collision with the insurgents, and the exchanging of several shots; could not identify any of the prisoners.

*Wm Johnson* testified to the arrest of Copland, the yellow man, in the middle of the Shenandoah, who was attempting to escape across the river; he was armed with a spear and a rifle; he said he had been placed in charge of Hall's rifle factory by Captain Brown.

*Andrew Kennedy* was at the jail when Copland was brought in; questioned him; he said he had come from the Western Reserve of Ohio; that Brown came there in August, and employed him at twenty dollars per month.

*Mr. FAULKNER* objected to the testimony, as implicating the white prisoners.

The presiding judge said his testimony could only be received as implicating himself.

*Mr. Kennedy* resumed—Copland said that our object was to liberate the slaves of this country; that he knew of nineteen of the party, but there were several others he did not know.

*Joseph A. Brua*—Was one of the prisoners in the engine-house, and was permitted to go out several times with a flag of truce; during the firing Coppie fired twice, and at the second fire, Brown remarked "that man is down;" witness then asked permission to go out, and found that Mr. Beckham had just been shot, and has no doubt that Coppie shot him.

*Mr. Allstadt* recalled—Think that Capt. Brown shot the marine who was killed; saw him fire.

The preliminary examination being concluded, the Court remanded the prisoners for trial before the Circuit Court.

The Circuit Court of Jefferson County, Judge Richard

Parker on the bench, assembled at two o'clock. The Grand Jury were called, and the Magistrate's Court reported the result of the examination in the case of Capt. Brown and the other prisoners. The Grand Jury retired with the witnesses for the State. At five o'clock they returned into Court and stated that they had not finished the examination of witnesses, and they were therefore discharged till ten o'clock next morning. It was rumored that Brown was desirous of making a full statement of his motives and intentions, through the press, but the Court refused all further access to him by reporters, fearing that he might put forth something calculated to influence the public mind, and to have a bad effect upon slaves. The mother of Cook's wife was in the court house throughout the examination.

Coffee said that he had a brother in the party, and that Brown had three sons in it. Also that there were two other persons, named Taylor and Hazlitt, engaged, so that, numbering Cook, five had escaped, twelve were killed, and five captured, making twenty-two in all.

Capt. Brown's object in refusing the aid of counsel was, that if he had counsel he would not be allowed to speak himself, and Southern counsel would not be willing to express his views.

The reason given for hurrying the trial was, that the people of the whole country were kept in a state of excitement, and a large armed force was required to prevent attempts at rescue.

The prisoners, as brought into the court, presented a pitiable sight—Brown and Stephens being unable to stand without assistance. Brown had three sword-stabs in his body, and one sabre-cut over his head. Stephens had three balls in his head, two in his breast and one in his arm. He was also cut on the forehead with a rifle bullet, which glanced off, leaving a bad wound.

Brown made no confession; but, on the contrary, said he had full confidence in the goodness of God, and was confident that he would rescue him from the perils that surrounded him. He had had rifles levelled at him, knives at his throat, and his life in as great peril as it now is, but that God had always been at his side. He knew God was with him, and feared nothing.

Alex. R. Boteler, member elect for Congress of that district,

had collected from fifty to one hundred letters from the citizens of the neighborhood of Brown's house, who searched it before the arrival of the marines. The letters were in the possession of Andrew Hunter, Esq., who had a large number of letters obtained from Brown's house by the marines and other parties. Among them was a roll of the conspirators, containing forty-seven signatures; an accurately traced map from Chambersburg to Brown's house; copies of letters from Brown, stating that as the arrival of too many men at once would excite suspicion, they should arrive singly; a letter from Merriam, stating that of the twenty thousand wanted, G. S. was good for one-fifth; also a letter from J. E. Cook, stating that the Maryland election was about to come off, the people will become excited, and we will get some of the candidates that will join our side.

The Circuit Court, Judge Parker presiding, met at 10 o'clock. The Grand Jury were called, and retired to resume the examination of witnesses. The Court took a recess awaiting the return of the Grand Jury.

M. Johnson, United States Marshal of Cleveland, Ohio, arrived in the morning. He visited the prisoners, and identified Copland as a fugitive from justice in Ohio.

Consternation among the slaves was caused by the fear of being seized as Colonel Washington's were, and they firmly believed the object of the prisoners was to carry them South and sell them. Not a single slave had yet been implicated as even sympathizing with the insurrectionists. Those carried off had all been captured and returned to their masters.

Cannon were stationed in front of the court house, and an armed guard patrolled around the jail.

Capt. Brown consented to allow Mr. Botts and his assistant, Mr. Green, to act as his counsel, they assuring him that they would defend him faithfully, and give him the advantage of every privilege that the law would allow.

Stephens declared that he did not desire to be defended by Northern counsel, preferring Southern, and that the Court should name them. There was a decided sympathy for Stephens, not only on account of his sufferings, but that he had shown none of that vindictiveness and hardihood that characterized Brown. His regret was regarded as caused by the consequences of his folly, and the examination the day before



indicated that the other prisoners had lost their confidence in Brown. and were not disposed to follow him in his defiant course.

At 12 o'clock the Court re-assembled.

The Grand Jury reported a true bill against the prisoners, and were discharged.

Charles B. Harding, assisted by Andrew Hunter, represented the Commonwealth; and Lawson Botts and his assistant, Mr. Green, were counsel for the prisoners.

A true bill was read against each prisoner :

*First* : For conspiring with negroes to produce insurrection.

*Second* : For treason in the Commonwealth; and,

*Third* : For murder.

The indictment was as follows :

*Judicial Circuit of Virginia, Jefferson County, to wit.*—The Jurors of the Commonwealth of Virginia, in and for the body of the County of Jefferson, duly impanelled, and attending upon the Circuit Court of said county, upon their oaths do present that John Brown, Aaron C. Stephens, alias Aaron D. Stephens, and Edwin Coppie, white men, and Shields Green and John Copland, free negroes, together with divers other evil-minded and traitorous persons to the jurors unknown, not having the fear of God before their eyes, but being moved and seduced by the false and malignant counsel of other evil and traitorous persons and the instigations of the devil, did severally, on the sixteenth, seventeenth, and eighteenth days of the month of October, in the year of our Lord eighteen hundred and fifty-nine, and on divers other days before and after that time, within the Commonwealth of Virginia, and the County of Jefferson aforesaid, and within the jurisdiction of this Court, with other confederates to the jurors unknown, feloniously and traitorously make rebellion and levy war against the said Commonwealth of Virginia, and to effect, carry out, and fulfil their said wicked and treasonable ends and purposes did, then and there, as a band of organized soldiers, attack, seize, and hold a certain part and place within the county and State aforesaid, and within the jurisdiction aforesaid, known and called by the name of Harper's Ferry, and then and there did forcibly capture, make prisoners of, and detain divers good and loyal citizens of said Commonwealth, to wit: Lewis W. Washington, John M. Allstadt,

Archibald M. Kitzmiller, Benjamin J. Mills, John E. P. Dangerfield, Armstead Ball, John Donoho; and did then and there slay and murder, by shooting with fire-arms, called Sharpe's rifles, divers good and loyal citizens of said Commonwealth, to wit: Thomas Boerly, George W. Turner, Fontaine Beckham, together with Luke Quinn a soldier of the United States, and Hayward Sheppard, a free negro, and did then and there, in manner aforesaid, wound divers other good and loyal citizens of said Commonwealth, and did then and there feloniously and traitorously establish and set up, without authority of the Legislature of the Commonwealth of Virginia, a Government separate from, and hostile to, the existing Government of said Commonwealth; and did then and there hold and exercise divers offices under said usurped Government, to wit, the said John Brown as Commander-in-Chief of the military forces, the said Aaron C. Stephens, alias Aaron D. Stephens, as Captain; the said Edwin Coppie, as Lieutenant, and the said Shields Green and John Copland as soldiers; and did then and there require and compel obedience to said officers; and did then and there hold and profess allegiance and fidelity to said usurped Government; and under color of the usurped authority aforesaid, did then and there resist forcibly and with warlike arms, the execution of the laws of the Commonwealth of Virginia, and with fire-arms did wound and maim divers other good and loyal citizens of said Commonwealth, to the jurors unknown, when attempting, with lawful authority, to uphold and maintain said Constitution and laws of the Commonwealth of Virginia, and for the purpose, end, and aim of overthrowing and abolishing the Constitution and laws of said Commonwealth, and establishing in the place thereof, another and different government, and constitution and laws hostile thereto, did then and there feloniously and traitorously, and in military array join in open battle and deadly warfare with the civil officers and soldiers in the lawful service of the said Commonwealth of Virginia, and did then and there shoot and discharge divers guns and pistols, charged with gunpowder and leaden bullets, against and upon divers parties of the militia and volunteers embodied and acting under the command of Colonel Robert W. Baylor, and of Colonel John Thomas Gibson, and other officers of said Commonwealth, with lawful authority to quell and subdue the said John Brown, Aaron C.

Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, and other rebels and traitors assembled, organized, and acting with them, as aforesaid, to the evil example of all others in like case offending, and against the peace and dignity of the Commonwealth.

*Second Count.*—And the jurors aforesaid, upon their oaths aforesaid, do further present that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, severally, on the sixteenth, seventeenth, and eighteenth days of October, in the year of our Lord eighteen hundred and fifty-nine, in the said county of Jefferson, and Commonwealth of Virginia, and within the jurisdiction of this Court, not having the fear of God before their eyes, but moved and seduced by the false and malignant counsels of others, and the instigations of the devil, did each severally, maliciously, and feloniously conspire with each other, and with a certain John E. Cook, John Kagi, Charles Tidd, and others to the jurors unknown, to induce certain slaves, to wit:—Jim, Sam, Mason, and Catesby, . . . . . the slaves and property of Lewis W. Washington, and Henry, Levi, Ben, Jerry, Phil, George, and Bill, the slaves and property of John H. Allstadt, and other slaves to the jurors unknown, to rebel and make insurrection against their masters and owners, and against the Government and the Constitution and laws of the Commonwealth of Virginia: and then and there did maliciously and feloniously advise said slaves, and other slaves to the jurors unknown, to rebel and make insurrection against their masters and owners, and against the Government, the Constitution and laws of the Commonwealth of Virginia, to the evil example of all others in like cases offending and against the peace and dignity of the Commonwealth.

*Third Count.*—And the jurors aforesaid, upon their oaths aforesaid, further present that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, severally, on the sixteenth, seventeenth, and eighteenth days of October, in the year of our Lord one thousand eight hundred and fifty-nine, in the county of Jefferson and the Commonwealth of Virginia aforesaid, and within the jurisdiction aforesaid, in and upon the bodies of Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, white persons, and Hayward Sheppard, a free

negro, in the peace of the Commonwealth then and there being, feloniously, willfully, and of their malice aforethought, did make an assault, and with firearms called Sharpe's rifles, and other deadly weapons to the jurors unknown, then and there, charged with gunpowder and leaden bullets, did then and there feloniously, willfully, and of their malice aforethought, shoot and discharge the same against the bodies severally and respectively of the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, and Hayward Sheppard; and that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, with the leaden bullets aforesaid, out of the fire-arms called Sharpe's rifles, aforesaid, shot and discharged as aforesaid, and with the other deadly weapons to the jurors unknown, as aforesaid, then and there feloniously, willfully, and of their malice aforethought did strike, penetrate, and wound the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, Hayward Sheppard, each severally; to wit the said Thomas Boerly in and upon the left side; the said George W. Turner in and upon the left shoulder; the said Fontaine Beckham in and upon the right breast; the said Luke Quinn in and upon the abdomen, and the said Hayward Sheppard in and upon the back and side, giving to the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, Hayward Sheppard, then and there with the leaden bullets, so as aforesaid, shot and discharged by them, severally and respectively out of the Sharpe's rifles aforesaid, and with the other deadly weapons to the jurors unknown as aforesaid, each one mortal wound, of which said mortal wounds they the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, and Hayward Sheppard each died; and so the jurors aforesaid, upon their oaths aforesaid, do say that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, then and there, them the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, and Hayward Sheppard, in the manner aforesaid, and by the means aforesaid, feloniously, willfully, and of their, and each of their malice aforethought, did kill and murder, against the peace and dignity of the Commonwealth.

*Fourth Count.*—And the Jurors aforesaid, upon their oaths aforesaid, further present that the said John Brown, Aaron C.

Stephens, alias Aaron D. Stephens, and Edwin Coppie and Shields Green. each severally on the seventeenth day of October, in the year of our Lord eighteen hundred and fifty-nine. in the County of Jefferson and Commonwealth of Virginia aforesaid, and within the jurisdiction of this Court, in and upon the bodies of certain Thomas Boerly, George W. Turner, and Fontaine Beckham, in the peace of the Commonwealth. then and there being feloniously, willfully, and of their malice aforethought; did make an assault, and with guns called Sharpe's rifles, then and there charged with gunpowder and leaden bullets, did then and there feloniously, willfully, and of their, and each of their malice aforethought, shoot and discharge the same against the bodies of the said Thomas Boerly. George W. Turner, and Fontaine Beckham, and that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens. Edwin Coppie, and Shields Green, with leaden bullets aforesaid, shot out of the Sharpe's rifles aforesaid, then and there, feloniously, willfully, and of their malice aforethought, did strike, penetrate, and wound the said Thomas Boerly, George W. Turner, and Fontaine Beckham, each severally, viz.: the said Thomas Boerly in and upon the left side; the said George W. Turner, in and upon the left shoulder and breast, and the said Fontaine Beckham in and upon the right breast, giving to the said Thomas Boerly, George W. Turner, and Fontaine Beckham, then and there, with leaden bullets aforesaid, shot by them severally out of Sharpe's rifles aforesaid, each one mortal wound, of which said mortal wounds they the said Thomas Boerly, George W. Turner, and Fontaine Beckham then and there died; and that the said John Copland, then and there, feloniously, willfully, and of his malice aforethought, was present, aiding, helping, abetting, comforting and assisting the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, and Shields Green in the felony and murder aforesaid, in manner aforesaid to commit. And so the jurors aforesaid, upon their oaths do say that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, then and there them. the said Thomas Boerly, George W. Turner, and Fontaine Beckham, in the manner aforesaid and by the means aforesaid. feloniously, willfully, and of their and each of their malice

aforethought, did kill, and murder, against the peace and dignity of the Commonwealth of Virginia.

Lewis W. Washington, John H. Allstadt, John E. P. Dangerfield, Alexander Kelly, Emanuel Spangler, Armstead M. Ball, Joseph A. Brua, William Johnson, Lewis P. Starry, Archibald H. Kitzmiller, were sworn in open court this 26th day of October, 1859, to give evidence to the Grand Jury upon this bill of indictment.

Teste:

ROBERT T. BROWN, *Clerk.*

A true copy of said indictment.

Teste:

ROBERT T. BROWN,

Clerk of the Circuit Court of Jefferson County, in the State of Virginia.

Which bill of indictment the Grand Jury returned this 26th day of October.

A true bill.

THOMAS RUTHERFORD, *Foreman.*

October 26, 1859.

The prisoners were brought into court, accompanied by a body of armed men. They passed through the streets, and entered the court house without the slightest demonstration on the part of the people.

Brown looked something better, and his eye was not so much swollen. Stephens had to be supported, and reclined on a mattress on the floor of the court-room, evidently unable to sit. He had the appearance of a dying man, breathing with great difficulty.

Before reading the arraignment,

Mr. Hunter called the attention of the Court to the necessity of appointing additional counsel for the prisoners, stating that one of the counsel (Faulkner) appointed by the County Court, considering his duty in that capacity as having ended, had left. The prisoners, therefore, had no other counsel than Mr. Botts. If the court was about to assign them other counsel, it might be proper to do so now.

The Court stated that it would assign them any members of the bar they might select.

After consulting Capt. Brown, Mr. Botts said that the prisoner retained him, and desired to have Mr. Green, his assistant, to assist him. If the Court would accede to that arrangement, it would be very agreeable to him personally.

The Court requested Mr. Green to act as counsel for the prisoner, and he consented to do so.

Capt. Brown then rose and said: I do not intend to detain the Court, but barely wish to say, as I have been promised a fair trial, that I am not now in circumstances that enable me to attend a trial, owing to the state of my health. I have a severe wound in the back, or rather in one kidney, which enfeebles me very much. But I am doing well, and I only ask for a very short delay of my trial, and I think I may get able to listen to it; and I merely ask this, that, as the saying is, "The devil may have his dues," no more. I wish to say, further, that my hearing is impaired, and rendered indistinct, in consequence of wounds I have about my head. I cannot hear distinctly at all; I could not hear what the Court has said this morning. I would be glad to hear what it said on my trial, and am now doing better than I could expect to under the circumstances. A very short delay would be all I would ask. I do not presume to ask more than a very short delay, so that I may in some degree recover, and be able at least to listen to my trial, and hear what questions are asked of the citizens, and what their answers are. If that could be allowed me, I should be very much obliged.

Mr. Hunter said the request was rather premature. The arraignment should be made, and this question could then be considered.

The Court ordered the indictment to be read, so that the prisoners could plead guilty, and would then consider Mr. Brown's request.

The prisoners were compelled to stand during the arraignment, but it was with difficulty, Stevens being held upright by two bailiffs.

The reading of the indictment occupied about twenty minutes; each of the prisoners responded to the question, "Not Guilty," and desired to be tried separately.

Mr. Hunter—The State elects to try John Brown first.

Mr. Botts—I am instructed by Brown to say that he is mentally and physically unable to proceed with his trial at this time. He has heard to-day that counsel of his own choice will be here, whom he will, of course, prefer. He only

asks for a delay of two or three days. It seems to me but a reasonable request, and I hope the Court will grant it.

Mr. Hunter said he did not think it the duty of the prosecutor for the Commonwealth, or for one occupying the position, to oppose anything that justice required, nor to object to anything that involved a simple consideration of humanity, where it could be properly allowed; yet, in regard to the proposition to delay the trial of John Brown two or three days, they deemed it their duty that the Court, before determining matters, should be put in possession of facts and circumstances, judicially, that they were aware of in the line of their duties as prosecutors. His own opinion was, that it was not proper to delay the trial of this prisoner a single day, and that there was no necessity for it. He alluded in general terms to the condition of things that surrounded them. They were such as to render it dangerous to delay, to say nothing of their exceeding pressure upon the physical resources of the community, growing out of circumstances connected with affairs for which the prisoners were to be tried. He said our laws, in making provisions for allowing, in the discretion of the Court, briefer time than usual in cases of conviction, for such offenders, between the condemnation and execution, evidently indicate, indirectly, the necessity of acting promptly and decisively, though always justly, in proceedings of this kind. In reference to Brown's physical condition, he asked the Court not to receive the unimportant statements of the prisoner as a sufficient ground for delay, but that the jailer and physician be examined. As to expecting counsel from abroad, he said that no impediment had been thrown in the way of the prisoners' procuring such counsel as they desired; but, on the contrary, every facility had been afforded; able and intelligent counsel had been assigned them here, and he apprehended that there was little reason to expect the attendance of those gentlemen from the North who had been written for. There was also a public duty resting upon them to avoid, as far as possible, within the forms of law and with reference to the great and never-to-be-lost-sight-of duty of giving a fair and impartial trial to the prisoners, the introduction of anything likely to weaken our present position, and give strength to our enemies abroad, whether it issues from the jury in time, or whether it comes from the mouths of the prisoners, or any other source. It was



their position that had been imperilled and jeopardized, as they supposed, by enemies.

Mr. Harding concurred in the objection of Mr. Hunter, on the ground of danger in delay, and also because Brown was the leader of the insurrection, and his trial ought to be proceeded with on account of the advantage thereby accruing to the trial of the others.

Mr. Green remarked that he had had no opportunity of consulting with the prisoner, or preparing a defence. The letters for Northern counsel had been sent off, but not sufficient time has been afforded to receive answers. Under the circumstances, he thought a short delay desirable.

Mr. Botts added that at present the excitement was so great as perhaps to deter Northern counsel from coming out ; but now that it had been promised that the prisoners should have a fair and impartial trial, he presumed that they would come and take part in the case.

The Court stated that if physical inability were shown, a reasonable delay must be granted. As to the expectation of other counsel, that did not constitute a sufficient cause for delay, as there was no certainty about their coming. Under the circumstances in which the prisoners were situated, it was rational that they should seek delay. The brief period remaining before the close of the term of the court, rendered it necessary to proceed as expeditiously as practicable, and to be cautious about granting delays. He would request the physician who attended Brown to testify as to his condition.

Dr. Mason thought Brown was able to go on understandingly with the trial. He did not think his wounds were such as to affect his mind or recollection. He had always conversed freely and intelligibly about the affair. He had heard him complain of debility, but not of hardness of hearing.

Mr. Cockerel, one of the guards of the jail, said that Brown had always been ready to converse freely.

The court refused to postpone the trial, and the whole afternoon was occupied in obtaining a jury for the trial of Brown, who was brought into Court on a cot.

The jailer was ordered to bring Brown into Court. He found him in bed, from which he declared himself unable to rise. He

was accordingly brought into Court on a cot, which was set down within the bar. The prisoner lay most of the time with his eyes closed, and the counterpane drawn up close to his chin. The jury were then called and sworn. The jurors were questioned as to having formed or expressed any opinion that would prevent their deciding the case impartially on the merits of the testimony. The Court excluded those who were present at Harper's Ferry during the insurrection and saw the prisoners perpetrating the act for which they were about to be tried. They were all from distant parts of the country, mostly farmers—some of them owning a few slaves, and others none. The examination was continued until twenty-four were decided by the Court and counsel to be competent jurors. Out of these twenty-four, the counsel for the prisoner had a right to strike off eight, and then twelve are drawn by ballot out of the remaining sixteen. The following were the questions put to the jurors:

Were you at Harper's Ferry on Monday or Tuesday?

How long did you remain there?

Did you witness any of the proceedings for which this party is to be tried?

Did you form or express any opinion from what you saw there with regard to the guilt or innocence of these people?

Would that opinion disqualify you from giving these men a fair trial?

Did you hear any of the evidence in this case before the examining Court?

What was your opinion based on?

Was it a decided one, or was it one which would yield to evidence, if the evidence was different from what you supposed?

Are you sure you can try this case impartially from the evidence alone, without reference to anything you have heard or seen of this transaction?

Have you any conscientious scruples against convicting a party of an offence to which the law assigns the punishment of death, merely because that is the penalty assigned?

The jury were not sworn on the case, but the Judge charged them not to converse upon the case, or to permit others to converse with them. They were dismissed at five o'clock, and the prisoner was then carried over to the jail on his cot, and the Court adjourned till morning.

## SECOND DAY.

Brown was brought in walking, and laid down on his cot, at full length, within the bar. He looked considerably better, the swelling having left his eyes.

Senator Mason was present.

Messrs. Harding and Hunter again appeared for the Commonwealth, and Messrs. Botts and Green for the prisoner.

Mr. Botts read the following dispatch, which was received that morning:

AKRON, Ohio, Thursday, Oct. 26, 1859.

"To C. J. FAULKNER, AND LAWSON BOTTS :

"John Brown, leader of the insurrection at Harper's Ferry, and several of his family have resided in this county many years. Insanity is hereditary in that family. His mother's sister died with it, and a daughter of that sister has been two years in a Lunatic Asylum. A son and daughter of his mother's brother have also been confined in the Lunatic Asylum, and another son of that brother is now insane and under close restraint. These facts can be conclusively proven by witnesses residing here, who will doubtless attend the trial if desired.

"A. H. LEWIS."

William C. Allen, telegraph operator at the Akron office, added to the above dispatch that A. H. Lewis was a resident of that place, and his statements were entitled to implicit credit.

Mr. Botts said that on receiving the above dispatch he went to the jail with his associate, Mr. Green, and read it to Brown, and was desired by the latter to say that in his father's family there had never been any insanity at all. On his mother's side there had been repeated instances of it. He added that his first wife showed symptoms of it, which were also evident in his first and second sons by that wife. Some portions of the statements in the dispatch he knew to be correct, and of other portions he was ignorant. He did not know whether his mother's sister died in the Lunatic Asylum, but he did believe that a daughter of that sister had been two years in the asylum. He also believed that a son and daughter of his mother's brother had been confined in an asylum; but he was not apprised of the fact that another son of that brother was insane and in close confinement. Brown also desired his counsel

to say that he did not put in the plea of insanity, and if he had been at all insane he was totally unconscious of it; yet he added that those who are most insane generally suppose that they have more reason and sanity than those around them. For himself he disdained to put in that plea, and sought no immunity of the kind. This movement was made totally without his approbation or concurrence, and was unknown to him, till the receipt of the dispatch above.

Brown then raised himself up in bed, and said: "I will add, if the court will allow me, that I look upon it as a miserable artifice and pretext of those who ought to take a different course in regard to me, if they took any at all, and I view it with contempt more than otherwise. As I remarked to Mr. Green, insane persons, so far as my experience goes, have but little ability to judge of their own sanity; and, if I am insane, of course I should think I know more than all the rest of the world. But I do not think so. I am perfectly unconscious of insanity, and I reject, so far as I am capable, any attempt to interfere in my behalf on that score."

Mr. Botts stated that he was further instructed by Mr. Brown to say that, rejecting this plea entirely, and seeking no delay for that reason, he does repeat to the court his request made before, that time be given for the foreign counsel to arrive that he has now reason to expect.

The day before a dispatch was received from Cleveland, Ohio, signed "Dan. Tilden," dated October 26, asking Brown whether it would be of use for counsel to leave last night. To this dispatch answer was returned that the jury would be sworn this morning, and that Brown desired the counsel to come at once.

The telegraphic operator here stated that this dispatch would be sent off at once, in advance of the dispatches sent by reporters, and he had learned this morning that it was sent before the storm of that night interrupted communication, and that counsel might reach here by 12 or 1 o'clock that night.

The course taken by Brown that morning made it evident that he sought no postponement for the mere purpose of delay, as he rejected the plea of insanity. Still, in his opinion, he could have a fairer trial if the defence were conducted by his own counsel than if he were defended by the counsel at present there.

Mr. Hunter observed that the prisoner's counsel having renewed the motion of the day before for delay for a specific period, indicated and based upon information received in the form of a telegram, the question now was whether there was sufficient grounds in this additional information to change the decision announced by the Court the day before on the same motion. If the Court did not at once deem this circumstance wholly insufficient, before the decision was made the counsel for the Commonwealth deemed it his duty to call attention to two or three matters connected with the affair. Though desirous to avoid forestalling the trial of this case, in regard to the present prisoner at the bar, they were prepared to prove that he had made open, repeated, and constant acknowledgment of everything charged against him. He had gloried in it, and we have but an exhibition of the same spirit and the same purpose in his announcement that he would permit no defence of insanity to be put in. What does he mean by wishing delay for the purpose of having a fair trial? In a proper sense, and in the only sense in which it can be regarded by the Court, it is a fair trial according to the laws of Virginia, and the safeguards against wronging the prisoner which these laws throw around him. If the prisoner's idea of a fair trial is to have it so shaped as to produce a fairness in his conception, outside of what the laws recognize, it becomes the duty of the counsel for the Commonwealth, and as he apprehended, of the Court, to resist any attempt of that kind. Considering the surrounding circumstances, to which it was unnecessary to particularly advert, there could be no right to claim delay, except so far as the prisoner could show in a reliable form that such delay was necessary to do justice in his particular case, according to the laws and policy of the State of Virginia. In regard to the telegram read, we know not who this Mr. Lewis is. We know not whether he is to come here as counsel for the prisoner, or whether he wants to head a band of desperadoes. We have a right to believe the latter as well as the former. There had been time enough since the letter for northern counsel was mailed last Saturday, for it to reach him, and for him to arrive here ere this, if he had designed coming. It was fairly inferable that he did not intend to come, and the telegram did not say he would come. But might it not be an attempt to gain time and learn the latest day when a res-

cue could be attempted? While commending the earnestness and zeal of the prisoner's counsel, he must ask the Court to reject the motion, and proceed with the trial at once.

Mr. Harding would be reluctant to withhold from a prisoner charged with a crime of the greatest enormity, as in the present case, anything calculated to afford him the amplest opportunity of justice; but he had able and intelligent counsel assigned him, who would see that he was fairly and impartially tried, and he therefore fully concurred with the remarks of his colleague in opposing the motion. He referred also to the fact that Brown pretended yesterday afternoon that he was unable to walk, and was brought into court on a bed, yet he walked back to jail after the close of the trial without difficulty. He thought those were mere pretences for delay, which the Court should overrule.

Mr. Green remarked that one day's delay would be sufficient to ascertain whether the expected counsel would come or not, and no prejudice could result to the Commonwealth from a small delay of that character. In reference to the new matter brought to the consideration of the Court, he did not believe the prisoner had made any acknowledgment upon which he could be convicted. All the acknowledgments, so far as he knew their character, referred to the treason; and those confessions, according to our law, are insufficient to convict a party who may have acknowledged the fact in the plainest manner to one hundred witnesses—for if that is all the evidence upon which the Commonwealth relies, the prisoner cannot be convicted, because our code provides that such confession shall be made in open court, and the prisoner has denied in open court, by putting in a plea of not guilty. As to sufficient time having elapsed for counsel to reach here, it was a reasonable supposition that the persons to whom Brown wrote were absent, and did not immediately receive the letter. The Commonwealth attorney does not know who Lewis is, but he is an ex-member of Congress, and said to be a man of respectability. As to what is called Brown's sham sickness of yesterday, it should be remembered that it was not then, nor or is it now, made the ground of application for delay. He did not think this trial should be hurried through, for the reason that a rescue might be apprehended, for such fears were idle.

The Court stated that he must see, in this case, as in any other, that a proper cause for delay was made out before granting such application. In the present case he could not see that the telegram gave any assurance that the additional counsel intended to come. The prisoner is now defended by counsel, who will take care that no improper evidence is adduced against him, and that all proper evidence in his behalf shall be presented. He could not see that a proper cause for delay was made out. The expected counsel might arrive before the case was closed, and could then see all the testimony which had been taken, and thus the prisoner might have the benefit of their advice although the case now proceeds. As to the matter of insanity, it was not presented in a reliable form ; instead of mere statements, we should have affidavits, or something of that character. He thought, therefore, that the jury should be sworn and the trial proceed.

The jury having been sworn to fairly and impartially try the prisoner, the Court directed that the prisoner might forego the form of standing while arraigned, if he desired it.

Mr. Botts put the inquiry to the prisoner, and he continued to lie prostrate on his cot while the long indictment, filling seven pages, was read.

*First : Insurrection.*

*Second : Treason.*

*Third : Murder.*

Mr. Harding addressed the jury. He presented the facts of the case, detailing the scenes of the Armory, the killing of the bridge-keeper, and the subsequent killing of the citizens named in the indictment ; the seizure of Lewis Washington and Mr. Allstadt, with their slaves ; the forming of a government within the limits of the Commonwealth ; the holding of citizens as prisoners of war, and the subsequent capture. He read the law on treason, levying war against the State, giving comfort to its enemies, or establishing any other government in its limits, punishable with death ; the law against advising with a slave, punishable with death ; and the law on the murder of citizens, punishable with death. All these charges would be distinctly proven, beyond a possibility of a doubt on the minds of the jury. He would show that the prisoner's whole object was to rob our citizens of their slaves, and carry them off by violence ; and he was happy to say against the

wills of the slaves, all of them having escaped, and rushed back to their masters at the first opportunity. He concluded by urging the jury to cast aside all prejudices, and give the prisoners a fair and impartial trial ; and not to allow their hatred of Abolitionists to influence them against those who have raised the black flag on the soil of this Commonwealth.

Mr. Green, on the part of the prisoner, after giving the law applicable to the case, said that the jury must bear in mind that they are judges of the law and the facts, and that if they have any doubt as to the law, or the fact of the guilt of this prisoner, they are to give the prisoner the benefit of that doubt.

On the first charge of treason, as a specific act of treason must be proven, it must be proven that he attempted to establish a separate and distinct government ; and it must also be proven what was purposed of treasonable acts before you can convict him on those charges. If it is intended to rely on his confessions to prove treason, the law distinctly says, " No conviction can be made on confessions, unless made in open court." There must be sufficient evidence to prove the charge, independent of any confessions out of the court, and it requires two distinct witnesses to prove each and every act of treason.

*Second:* Conspiring with slaves to rebel and make insurrection. The jury must be satisfied that such conspiracy was done within the State of Virginia, and within the jurisdiction of this Court. If it was done in Maryland, this Court could not punish the act. If it was done within the limits of the Armory at Harper's Ferry, it was not done within the limits of this State, the Government of the United States holding exclusive jurisdiction within the said grounds. Attorney-general Cushing had decided this point with regard to the Armory grounds at Harper's Ferry, which opinion was read to the jury, showing that persons residing within the limits of the Armory cannot even be taxed by Virginia, and that crimes committed within the said limits are punishable by the Federal Courts. Although the jury may doubt about the law on the subject, they must give the prisoners the benefit of that doubt upon the trial. Over murder, if committed within the limits of the Armory, this court has no jurisdiction, and in the case of Mr. Beckham, if he was killed on the railroad bridge, it was committed



within the State of Maryland, which State claims jurisdiction up to the Armory grounds. Although he may be guilty of murder, it must be proven that it was deliberate and premeditated murder to make it a capital offence ; if otherwise, the killing was murder in the second degree, punishable with imprisonment. If you have any doubt on these points you must give that doubt to the prisoners. He was satisfied the jury will not allow any outside excitement to affect them, and that they will do their duty faithfully and impartially.

Mr. Botts impressively addressed the jury. The case was an unusual one, and the crime charged in many respects unknown. The jury trial called for a calm, unimpassioned deliberation, and not the seizure upon loose statements for a conviction. The jury must be above all prejudices and influences, and deliberate calmly, and free of all resentment, bearing in mind that the mission of the law is not to wreak vengeance, and that the majesty of the law is best maintained when judges, counsel and jury rise above these influences. The burden of proof is on the Commonwealth, and if she fails to substantiate her charges, you are bound to do your duty impartially, and find your verdict on the law and testimony that the Commonwealth may be able to present to you. He then proceeded to go over the same grounds taken by Mr. Green on each of the three points of the indictment—treason, insurrection and murder. It is no difference how much a jury may be convinced in their own minds of the guilt of the prisoner, it is essential that they must have proof of positive guilt, in a case like this, involving both life and liberty.

Mr. Botts, in reviewing the law bearing on the case, evinced a determination to avail himself of every advantage that the law allows, and to do his duty to the prisoner earnestly and faithfully. It was due to the prisoner to state that he believed himself to be actuated by the highest and noblest feelings that ever coursed through a human breast, and that his instructions were to destroy neither property nor life. They would prove by those gentlemen who were prisoners that they were treated with respect, and that they were kept in positions of safety, and that no violence was offered to them. These facts must be taken into consideration, and have their due weight with the jury.

Mr. Hunter followed, stating his purpose to avoid anything

by way of argument or explanation not immediately connected with the particular issue to be tried, and to march straight forward to the attainment, so far as may be in our power, of the ends of justice, by either convicting or acquitting the prisoner at the bar. With a single preliminary remark explanatory of his position here as assistant, a position which had been assigned to him by the governor of the Commonwealth, as well as his honor the judge, he passed at once to a review of what was the law in reference to the case, and what he expected to be able to prove to the satisfaction of the jury. First, as to high treason, this was probably the first case of high treason, or treason against the State, that ever had been tried here by our State courts, and he fervently hoped it would be the last that would ever occur ; and probably in some degree not only upon our decision, but upon our prompt decision of this case, will that result depend.

He thought his friends on the other side were totally mistaken in their view that the law as it now stands on our statute books in reference to overt acts was, either in language, or substantially, that contained in the Constitution of the United States. On the contrary, the phraseology had been varied from that of the Constitution, and, as he conceived, for a plain and palpable purpose. All the powers vested in the Federal Government were given with great jealousy. This was a historical fact, perfectly familiar, and consequently, while treason against the United States consisted only in levying war against them or adhering to their enemies and giving them aid and comfort, there is no provision that no person shall be convicted of treason unless upon the testimony of two witnesses of some overt act or confession in open court. Yet the State law is more full, and includes within its definition of treason the establishing, without the authority of the Legislature, any government within its limits, separate from the existing Government, or the holding or executing, under such Government, of any office ; professing allegiance or fidelity to it, or resisting the execution of law, under the color of its authority ; and it goes on to declare that such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in Court, shall be punished with death. Any one of these acts constitutes treason against this Commonwealth, and he believed that the prisoner had been guilty

of each and all these acts, which would be proven in the clearest manner, not by two, but by a dozen witnesses, unless limited by the lack of time. The prisoner had attempted to break down the existing Government of the Commonwealth, and establish on its ruins a new government; he had usurped the office of Commander-in-Chief of this new government, and, together with his whole band, professed allegiance and fidelity to it; he represented not only the civil authorities of State, but our own military; he is doubly, trebly and quadruply guilty of treason.

Mr. Hunter proceeded again to the question of jurisdiction over the Armory grounds, and examined the authority cited on the other side, of Attorney-General Cushing; the latter was an able man, but he came from a region of country where opinions are very different from ours in relation to the power of the Federal Government as affecting State rights. Our Courts are decidedly adverse to Mr. Cushing's views. In all time past, the jurisdiction of this county of Jefferson in criminal offences committed at Harper's Ferry, has been uninterrupted and unchallenged, whether they were committed on the Government property or not. He cited an instance, twenty-nine years ago, where an atrocious murder was committed between the very shops in front of which these men fought their battles, and the criminal was tried here, convicted, and executed under our laws. There was a broad difference between the cession of jurisdiction by Virginia to the Federal Government and mere assent of the State that the Federal Government should become a landholder within its limits. The laws of Virginia, by virtue of which the grounds at Harper's Ferry were purchased by the Federal Government, ceded no jurisdiction. Brown was also guilty, on his own notorious confession, in advising conspiracy. In regard to the charge of murder, the proof will be that this man was not only actually engaged in murdering our citizens, but that he was the chief director of the whole movement. No matter whether he was present on the spot or a mile off, he is equally guilty. In conclusion, Mr. Hunter said that he hoped the case would be considered with fairness and impartiality, and without fear, favor or affection; and he only asked that the penalty might be visited on the prisoner which law denounces, which reason denounces, which our safety requires, and which the laws of God and man approve.

## WITNESSES CALLED.

*Dr. Starry*, on Sunday night, heard a shot fired at the Ferry; heard a cry, looked out, and saw two men passing from toward the Armory gate, and a tall man came from the Armory gate, and two men from the cars hallooed, "There he goes now!" The man stopped, raising his rifle; they followed him to the Armory gate, and exchanged shots with him; Conductor Phelps was one of those men; afterwards found a black man, Hayward, dying in the railroad office; he said he was commanded to stop by the men on the bridge, and refusing, they fired upon him; saw several men patrolling during the night, and go into the bridge; did not know what to make of it, and went to inquire of the Armory watchman what it meant; met a man who levelled his rifle at him; asked him where the watchman was, and was answered that he was not there, but that there were "a few of us here;" afterward, in the morning, saw a wagon with three armed men following it; then went to Mr. Kitzmiller and Mr. Ball, and told them that an armed body of men had possession of the Armory, and not to go near it; also gave information to the other persons employed in the Armory; saw also three of them at Hall's works; did not see more than thirty; recognized them by a peculiar hat they wore; rode to Charlestown to give the alarm and get assistance; returned about eleven o'clock, and assisted in bearing orders and guiding the armed forces to the best place of attack; did not see or recognize Brown there at all.

Cross-examined by Mr. Green—As I rode past the Armory, armed men were at the gate; they did not attempt to stop me; I was determined not to be stopped.

*Conductor Phelps*, sworn—On Sunday night, the 15th, my train arrived at 1.25, bound east; saw no watchman at the bridge; thought it strange, as his business was to be there; was talking to the engineer, and was in the act of starting ahead, when the watchman came up to me, much excited, to state that he had been attacked in the bridge by men carrying rifles; Mr. Horsey was there with my light before starting the train; the baggage-master and a passenger accompanied him, and when they entered the bridge some one said, "stand and deliver;" had previously told the engineer to follow him slowly, but immediately saw the muzzles of four

rifles resting on a railing, and pointed at us ; told the engineer to "back"—something was wrong on the bridge—which he did ; as I got on the tresseling, I heard the report of a gun, and Hayward, the colored man, came running to me, and said, "Captain, I am shot ;" the ball had entered the back, and came out under the left nipple ; carried him to the railroad office, and started for the doctor, and saw one man come out of the bridge, and go towards the Armory gate ; remarked, "There he goes now," and Throgmorton, clerk at the Wager House, fired at him ; the shot was returned by two men at the Armory gate ; I was close behind Throgmorton, who exchanged several shots with them ; this was ten minutes after Hayward was shot ; heard the men loading their rifles again ; the reports were very loud, and I wondered why the people were not aroused ; walked back to the railroad office, and one of the party on the bridge came out ; he said, "You can come over the bridge with your train ;" I replied, "I would rather not, after these proceedings," and asked, "What do you want ?" he replied, "We want liberty. and we intend to have it!" I then asked, "What do you mean ?" he replied, "You will find out in a day or two ;" I then felt alarmed for the safety of myself and passengers, and concluded to wait till daylight ; men were passing back and forward from the bridge to the gate of the Armory ; each appeared to be in blankets ; the passengers were much excited, and wanted to know what it meant ; went to the back of the train, and saw from twenty to thirty men about the engine-house ; at about 4 o'clock saw a wagon driven in the yard. and nearly a dozen men jumped out of it, also a carriage, but did not see any one get out of it ; saw men go backward and forward, who seemed to be putting something in the wagon ; they were also going up and down the street leading from the Armory, and all seemed busy at something ; this continued until nearly daylight, when the wagon left the yard and passed over the bridge to the Maryland side.

About 3 o'clock, before the wagon left, an old gentleman came to me and said, "The parties who have arrested me allowed me to come out on condition that I would tell you that you might cross the bridge with your train ;" I afterward learned that this was Mr. Koise, a citizen of the town ; replied that "I would not cross the bridge until daylight, that

I might see whether it was safe ;" afterwards saw a man coming down Shenandoah street, with a lantern, an armed man arrested him ; afterwards saw a short stout negro walking with a staff with one of these men ; could not see what was in the wagon ; afterwards a black boy brought a note to the clerk of the Wager House ordering breakfast for forty-seven men ; determined to go out and ascertain what it meant ; met a man whom he now recognized as Coppie, and asked him what they meant ; he replied, "We don't want to injure you or detain your train ; you could have gone at 3 o'clock . all we want is to free the negroes ;" then asked if the train could now start, and went to the guard of the gate, who said, "There is Captain Smith—he can tell you what you want to know ;" went to the engine-house, and the guard called Capt. Smith, that somebody wanted to see him ; the prisoner at the bar came out, and I asked him if he was captain of these — ; he replied he was ; asked him if I could cross the bridge, and he peremptorily responded, "No, sir ;" then asked him what he meant by stopping my train ; he replied, "Are you the conductor on that train ?" told him I was, and he said, "Why, I sent you word at 3 o'clock that you could pass ;" told him that after being stopped by armed men on the bridge, I would not pass with my train ; he replied, "My head for it, you will not be hurt ;" said he was very sorry ; it was not his intention that any blood should be spilled ; that it was bad management on the part of the men in charge of the bridge ; I then asked him what security I would have that my train would pass safely, and asked him if he would walk over the bridge ahead of my train with me ; he called a large stout man to accompany him, and one of my passengers, Mr. McByrne, asked to accompany me ; but Brown ordered him to get into the train, or he would take them all prisoners in five minutes ; Brown accompanied me ; both had rifles ; as we crossed the bridge, the three armed men were still in their places ; when we got across, Brown said to me, "You doubtless wonder that a man of my age should be here with a band of armed men, but if you knew my past history you would not wonder at it so much ;" my train was then through the bridge, and I bid him good morning, jumped on my train, and left him.

Witness returned to Harper's Ferry on Tuesday, and went

in with Governor Wise and others to see Brown, who was a prisoner; heard his conversation with Wise and Hunter; Mr. Wise said he "was sorry to see a man of his age in that position;" Brown replied that he "asked no sympathy, and had no apologies to make;" he knew exactly what he was about; the Governor asked him if he did not think he was doing wrong in running off with other people's property; Brown said, "No, he didn't;" he stated that he never had but twenty-two men of his party, but expected large reinforcements from Maryland, Virginia, North and South Carolina, and, I think, some of the New England States and New York. He said that the arms were sent to them from Massachusetts; think he spoke of Sharpe's rifles, revolvers, and spears; said he could arm from 1,500 to 2,000 men; said he had Harper's Ferry in his eye as the place for his operations; that he had rented a farm four miles off, from Dr. Kennedy, and had paid the rent up to March, and that all his arms were sent to him there from Chambersburg, Pa.; said those who brought the arms there did not know what they were, as he had taken the precaution to place them in double boxes; they were addressed to J. Smith & Sons.

Brown told Gov. Wise that he had books in his trunk that would explain to him his whole proceedings, and what the purpose of his business was; Col. Lee said he had one, and handed it to Gov. Wise; Brown asked him to read two of its first preambles and four of the last sections, which he did, and Brown said that was a correct copy; in reply to a question of Gov. Wise, he said he was Commander-in-Chief of the forces under the Provisional Government, and that he then held that position; he said the constitution was adopted in a place called Chatham, in Canada; Brown said there was a Secretary of War, Secretary of State, Judge of the Supreme Court, and all the officers for a General Government; he said there was a House of Representatives, and that there was an intelligent colored man elected as one of the members of the House [sensation]; Gov. Wise asked Brown if he had taken the oath of allegiance provided for in the 48th article; he replied he had; asked if all the white men of his band had taken the oath; he replied that they had; he said that there were appointed and commissioned officers; that Stephens, Leeman, and one of Brown's sons were captains, and Coppie was a lieu-

tenant; he said something about a battle in Kansas, and having had one of his sons shot; I think he said Cook held a captain's commission; Gov. Wise asked Brown if he thought he had been betrayed to the Secretary of War; said he thought he had been betrayed, but had practised the ruse to prevent suspicion; the Governor asked him what that ruse was, but he refused to answer; said he knew exactly the position he had placed himself in, and if his life was forfeited he was prepared to suffer.

Mr. Green, counsel for the prisoner, interrupted the witness, and said to the Court that he had just received a dispatch from Cleveland, announcing that counsel was coming, and would almost certainly be here at night. As this was a very important witness, and as it was late in the evening, he would ask the Court to adjourn until morning, in order that counsel might have an opportunity to cross-question the witness. He did not intend to conduct the case longer than the arrival of counsel selected by the prisoner. As only scraps of a conversation of two hours with Gov. Wise had been picked out and given to the jury, he desired that the witness should be questioned as to the other parts of the conversation.

Mr. Hunter replied that there were several other witnesses to be called, of the same character, to whom such questions could be put by new counsel the next day. If the cases were not pushed on, the whole balance of the term would not be sufficient to try these men. He thought there was no reason for delay, especially as it was uncertain whether the counsel could get here before the next day.

The Court decided that the witness should proceed.

Cross-examined by Mr. Green—In conversation, Brown said it was not his intention to harm anybody or anything; was sorry men had been killed; it was not by his orders or with his approbation, and would not occur again, provided the people were peaceable and quiet; when Brown spoke of taking them all prisoners if they did not get into the cars, he appeared to want the train to go on as soon as possible; it was advice more than in the form of a threat; did not recognize Brown till I talked with him in the armory yard; don't think Brown was with the party on the bridge or in the wagon, for if he had been I think I would have recognized him from his peculiar beard.



By Mr. Hunter—When Brown was parleying with us at the bridge, the three armed men remained on the bridge; saw what seemed to be a man dressed in women's clothing pass, followed by a boy with a box or bundle.

*Col. Lewis W. Washington*, sworn—[He detailed the circumstances as previously stated.]

Cross-examined by Mr. Green—Cannot say whether the marines fired after they broke into the engine-house; the noise was great, and several shouted from the inside that some one had surrendered the prisoners; we were kept in the rear engine-house, and allowed to keep a safe position, so that there was no effort to endanger us; Brown's conduct was not rude or insulting toward us.

By Mr. Hunter—Was present at the conversation with Gov. Wise on Tuesday; Gov. Wise asked Brown if he had not selected Harper's Ferry as a border place between Maryland and Virginia for the establishment of his Provisional Government, and he answered, "Certainly," he avowed that his object was to free the Southern slaves, and said that his party consisted of twenty-two men, nineteen of whom came over with him; he said he had 200 Sharpe's rifles, 200 revolvers, and witness does not remember how many spears; Brown said he had enough to arm about 1,500 men; the Governor asked if he expected that number; he said no doubt that number, and five thousand if he wanted them; he detailed the conversation respecting the Provisional Government substantially as the last witness.

By Mr. Botts—At the time of the attack on the engine-house, the prisoners remained in the rear, at the suggestion of Brown and his party; heard Brown direct his party not to fire on any unarmed man; he gave that order more than once.

By Mr. Hunter—Cook said Brown had been studying this subject twenty or thirty years. Had reconnoitered Harper's Ferry repeatedly.

By Mr. Botts—The prisoners were allowed to go out, and assure their families of their safety; some went out several times; told his men not to return from his dwelling-house; there were numerous shots toward the tank where Beckham was killed; Brown assured witness that he should be treated well, and his property should not be destroyed.

By Mr. Hunter—While a prisoner in the engine-house,

overheard a conversation between Stephens and another party, not known to witness, about slaveholding. Stephens asked the man if he was in favor of slavery? He said, "Yes, although not a slaveholder." Stephens said, "You are the first man I would hang."

By Mr. Harding—One of the three negroes taken with the witnesses was kept in the Armory yard; another escaped, and went home; saw no conversation in particular between the party and the negroes who were taken there; all the negroes were armed with spears while in the Armory yard; they walked about the Armory grounds, and one came and warmed himself; no negro from this neighborhood appeared to take up arms voluntarily; saw no wounded men dragged into the engine-house.

At 7 o'clock the court adjourned till morning.

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#### THIRD DAY.

Capt. Cook arrived here at one o'clock on the morning of the trial. He said that if Brown had taken his advice in relation to mounting, a thousand men could not have taken them. There is great rejoicing at his arrest. He said that Fred Douglas acted the coward, having promised to be there in person.

George H. Hoyt, of Boston, counsel for Brown, arrived at the same time.

The Court met at eleven o'clock. Brown was led from the jail, walking very feebly. He lay down upon his cot.

Senator Mason entered the Court with Mr. Hoyt, the Boston counsel of Brown; he remarked that the testimony of Col. Washington and Mr. Phelps yesterday was strictly truthful.

The jury were called, and answered to their names.

Mr. Botts announced the arrival of Mr. Hoyt, who had come here to assist the counsel for the prisoner. At present, however, he did not feel disposed to take part in the case. Whenever he should feel disposed he would do so.

Mr. Hunter suggested that he had better be qualified as a member of the bar by producing proof from the Boston bar.

Mr. Hoyt had not brought his credentials of admission.

The Court said that that was not required in order to be strictly legal; to that fact any citizen's evidence would answer.

Mr. Green said his partner had read letters from fellow-students of Mr. Hoyt, alluding to him as a member of the bar.

Mr. Hoyt then took the customary oath.

By Mr. Botts—Conductor Phelps recalled—The question put to him was prepared by Brown. The firing was commenced by those men on the bridge who shot Hayward; the next firing was by Throgmorton; does not know whether the firing at Hayward was intentional; there was no attack on Brown's men until after Hayward was shot; he was shot by armed men in the Winchester span of the bridge.

By Mr. Botts—*Col. Lewis W. Washington* recalled—Negotiations were opening with Brown for the release of the prisoners before the general firing commenced on Monday; does not know whether all the prisoners signed the proposition for a suspension of firing; in the opening negotiations, Brown frequently suggested that the prisoners should cross the bridge with him to the second canal, and the lock was not to be fired upon until they reached that point; none of the prisoners made any objection to the proposition; Brown said he was too old a soldier to yield the advantage he possessed in holding hostages; during the day Brown's son was wounded in the breast, the ball passing around to the side, but he took his weapon again, and fired frequently before his sufferings compelled him to retire; heard Capt. Brown frequently complain of bad faith of people on a flag of truce; heard him make no threat, nor utter any vindictiveness against the people; Mr. Brewer went out and brought in a promise that the people would not fire while negotiations were pending; cannot say that all the firing of Capt. Brown or his men was in self-defence; heard Brown give frequent orders not to fire on unarmed citizens; the first firing was against the engine-house; Brown said the people appeared to pay but little regard to the lives of the citizens, and we must take the chances with them; after the first attack on the engine-house by the marines, there was not a general cry of "surrender;" one cried surrender, but the others fought on; Brown had a rifle in his hand when he was struck down by the marines, and

received a cut over the head with a sword of Lieutenant Green.

Mr. Hunter laid before the jury the printed Constitution and ordinance of the Provisional Government, reading the two first clauses of the preamble, the 7th, 45th and 48th articles, and briefly summing up other portions of the Constitution. Sheriff Campbell knows the handwriting of the prisoner; has copied a letter for him.

Brown said he would himself identify any of his handwriting, and save all that trouble. He was ready to face the music.

Mr. Hunter would prefer proving them by Mr. Campbell.

Brown—Either way, as you please.

A large bundle of letters was produced. Each was identified by Campbell and handed to Brown, who, at the first glance, replied to each in a loud voice, "Yes, that is mine." The papers and letters were about fifty in number.

On receiving a list of members of the Convention, Mr. Hunter read it. It was headed, William Charles Morris, President of the Convention; and H. Kagi, Secretary of the Convention. On handing the list to Brown, he exclaimed with a groan, "That's my signature."

In reference to another paper, he said, "I have nothing to say about that."

Mr. Hunter read a letter from J. R. Geddings, acknowledging the receipt of a letter from Brown, and that he would be pleased to see him at his house during the summer.

Mr. Hunter then read the letter from Gerrit Smith about the "Kansas work," which has already been published. It has June, B, 1859, indorsed on the back, in Brown's writing.

Mr. Botts here insisted on the right of examining the letters before their being read.

*Armstead Ball*, master machinist at the Armory, testified that early in the morning he was aroused by Benjamin Hobbs announcing that persons were at the Armory, carrying off government property; reached the gate, was accosted by two armed men, and seized as a prisoner; refused to make any explanation until within the Armory yard; Stephens was sentry at the gate; was conducted to Capt. Brown, who told me his object was to free the slaves, and not the making of war on the people; that my person and private property would be

safe; that his war was against the accursed system of slavery; that he had power to do it and would carry it out; it was no child's play he had undertaken; he then gave me permission to return to my family, to assure them of my safety and get my breakfast; started back home, and was accompanied by two armed men, who stopped at the door; breakfast not being ready, went back, and was allowed to return home again, under escort, at a later hour; on returning again, Capt. Brown said it was his determination to seize the arms and munitions of the government, to arm the blacks to defend themselves against their masters; Brown also made a proposition to witness and other officers of the Armory to deliver into his possession the munitions of war belonging to the Government; he replied that they were already in his possession, as we were; Brown frequently told us our safety depended on the good conduct of our citizens; when the firing commenced all fell; we were in danger, and almost any proposition that was made was accepted to secure our safety; Brown said if the citizens were willing to risk their lives and those of the prisoners, to capture him, they must abide by it; Brown made one proposition to go to the canal lock, give up their prisoners, and fight it out with the military; at daylight, on Tuesday morning, witness appealed to Brown on the ground of humanity to the prisoners, as well as to the men who appeared so bound to him, not to persist in spilling more blood; Brown replied that he was well aware of what he was about, and knew the consequences; that he was already proclaimed an outlaw, and \$3,500 was on his head; with regard to the killing of Beckham, one of Brown's party had fired in that direction several times; remonstrated with him when levelling his rifle at an old man named Guess, that he was not a combatant, and he desisted; afterwards heard him fire, and heard him say, "Dropped him;" when we heard that Beckham was dead, the man who fired asked whom he was; we told him he was an old and respectable citizen, and mayor of the town, and the man who fired expressed himself very sorry; this man was afterwards killed at the charge of the marines; Capt. Brown made preparations for resisting the marines; he was always in arms, but I do not think I saw him fire. [The other portions of Mr. Ball's testimony were merely in corroboration of Mr. Washington's.]

By Mr. Green—We, as prisoners, agreed to such terms of capitulation as our citizens were willing to accept. The proposal was written by Mr. Dangerfield, and dictated by Brown. Do not know whether Brown's son and Stephens were wounded while they accompanied the citizens with the flag of truce. Did not know that any of them were Brown's sons, until I heard Brown say to Capt. Simms, "there lies one of my sons dead, and here is another dying." Brown frequently remarked that the citizens were acting indiscreetly in persisting in firing on their own citizens; he maintained a different position all the time. Brown repeatedly said he would injure no one but in self-defence; Coppie frequently urged us to seek places of safety, but Brown did not; he appeared to desire us to take care of ourselves, and at the time of the charge of the marines, told us we must equally occupy the post of danger with themselves. There were three or four slaves in the engine-house; they had spears, but all seemed badly scared; Washington Phil was ordered by Brown to cut a port-hole through the brick wall; he continued until a brisk fire commenced outside, when he said, "this is getting too hot for Phil," and he squatted. Brown then took up the tool and finished the hole.

*John Allstadt*, sworn—On Monday morning, about three, was awakened from sleep; asked who was at the door; the reply was, "Get up quick, or we will burn you up;" asked what they intended to do; they said, "Free the country of slavery;" told me they were going to take me to Harper's Ferry; dressed myself, and when I got to the door they had all my blacks, seven in number; we were all put into the wagon; the negroes were then all armed with pikes; all the men who took us up were armed; we went to the Armory-yard, where I was put in charge of one of Brown's party; afterwards we were ordered into the watch-house; saw Col. Washington there; Brown came and spoke to us about our getting two negroes to take our places, and then he would release us; nothing further was said about that; Brown's rifle was cocked all the time; the negroes were placed in the watch-house with spears in their hands; the slaves showed no disposition to use them; witness was afterwards transferred to the engine-house; several negroes were there; saw Phil making port-holes by Brown's order; the other negroes were doing nothing,

and had dropped their spears; some of them were asleep nearly all the time [laughter]; when the marines made the assault, Brown's party took position behind the engine and aimed at the door; Brown was in front, squatting; he fired at the marines, and my opinion is, that he killed that marine.

By Mr. Green—Did not see any others shoot; cannot state certainly by what shot the marine was killed; he might have been killed by shots fired before the door was broken open; was much confused and excited at the time; heard regrets expressed at Beckham's being killed.

*Alexander Kelly*, sworn—Described the manner of Thomas Boerley's being killed on Monday. Brown's party fired at witness, and witness returned the fire. Boerley was with witness, and was armed with a gun. Saw him soon after he was shot. The shot came from the direction of Shenandoah street.

Not cross-examined.

*Albert Grist*, sworn—Sunday night had been to meeting with my son; coming home across the Shenandoah bridge, was seized by two men with rifles; when we got to the end of the bridge, were stopped by a man with a spear; asked what was the matter; was the town under martial law; he told me I should not be hurt, and asked me whether there were many slaveholders about Harper's Ferry; I told him no; Brown came up, and observed, "You have got some prisoners;" they took us to the Armory; found some citizens there; being tired, we laid down; Brown said his object was to free the slaves; told him there were not many there; he replied, "The good book says we are all free and equal," and if we were peaceable we should not be hurt; there was some firing about that time; afterward, about 3 o'clock, witness was sent to tell the conductor that the train might pass unmolested; saw Mr. Beckham, and delivered the message; Brown then dismissed me; did not go home, being afraid some of Brown's men, not knowing this, might shoot me; saw Hayward brought in, wounded.

Mr. Kelly, recalled—Saw Geo. W. Turner killed on High street; he was shot while in the act of levelling his gun; the shots came from the corner of Shenandoah and High streets; the men who fired had rifles; one had a shawl on.

*Henry Hunter*, sworn—Went to the Ferry with the Charlestown Guard; stayed in the bridge, leaving the company; went

off fighting on my own hook; saw Beckham fall when shot; heard the whistling of the ball; undertook to go to his assistance, but was withheld by a friend; soon after, another person went to remove the body, saying he "would help the Squire;" heard the whistling of another ball; think that Beckham had a pistol in his coat pocket, judging from the weight and shape of the pocket; did not see it, and don't think the people from the Armory yard saw it; the shot that killed Beckham came from the engine-house; numerous shots were fired from the engine-house at the tank.

The cross-examination of this witness elicited nothing new.

*Col. Gibson*, sworn—Helped a portion of the militia of Jefferson County to suppress the insurrection; the Jefferson Guards and other detachments were in action; they were called out by authority of law; three insurgents were killed at the rifle factory, and Copland captured.

Cross-examined—There was firing by outside citizens, and the three killed were not under my command; don't think the insurgents fired a gun at the rifle factory, but endeavored to make their escape across the river.

*Benjamin T. Bell*, sworn—Went to Harper's Ferry armed; did not join the military; was stationed in the Galt House, in Capt. Botts' company; in the evening walked out on the platform; saw Beckham shot; went as near him as was safe, but perceived no breathing; there was firing from the engine-house towards the railroad; Mr. Young, a member of the Jefferson Guards, was wounded while making a charge against the insurgents; saw others shot; there were probably thirty shots fired from the engine-house towards the tank, and in other directions.

Cross-examined—There was general firing in almost every direction; McCabe was about firing when he was shot; there were twenty or thirty men firing at the engine-house when Young and McCabe were wounded.

*Lewis Starry* examined—He testified respecting the killing of Turner.

The prosecution rested here.



## THE DEFENSE.

The counsel for the defense called Joseph A. Brewer, who testified that he was one of the prisoners in the engine-house with Washington and others ; Brown remarked that the prisoners should share their danger ; they were allowed to shelter themselves as they could ; Cross went out with a flag of truce : another went out and came back wounded ; Stephens and Kitzmiller went out, and Stephens was shot ; after that it commenced raining very hard ; supposed Stephens was dead ; he lay near the corner of the depot ; heard groaning, and saw Stephens moving ; asked Brown to send a man to the relief of Stephens ; Brown refused to send any one, because he would be shot ; witness was allowed to go and assist Stephens into the hotel ; he returned to the engine-house according to his pledge ; was sent several times by Brown to request the citizens not to shoot, as the lives of the prisoners were endangered ; negotiations were going on between Brown and the prisoners before the general firing commenced ; Brown proposed that he should retain possession of what he held, including the Armory and negroes, and Col. Washington and the others seemed to acquiesce in this arrangement ; Cross was sent out to confer with Beckham and others on the subject ; a guard went with him, who were fired upon ; after that Stephens wanted to shoot, but Kitzmiller appealed to him and they went out together to stop the firing ; when they did not return, Brown seemed to show temper, and there was a change in the arrangements ; after that Brown said he had it in his power to destroy that place in half an hour, but would not do it, unless resisted ; think a shot from the water-tank struck Coppie ; he then returned the fire, and some one said " that man's down ; " the special object of witness in going out was to see the firing from the tank, which was annoying to those in the guard-house.

*A. M. Kitzmiller, sworn*—Made repeated efforts to accommodate matters with Brown ; he said his object there was to free the slaves from bondage, and if necessary fight the pro-slavery men for that purpose ; I was first surprised, then indignant, and finally disgusted with Brown ; he said to me, " There is a company of riflemen on the bridge ; get them to go in company with Stephens ; " Mr. Hunter told them he was

sorry they did not leave their guns ; Stephens remarked that would not do ; I had no flag, and did not consider myself the bearer of a flag of truce ; as to the rifle company on the bridge, I saw they were our own men, waved my handkerchief, and told the other man to remain ; soon heard firing very close ; Stephens fired in reply to a shot which struck him from the house by the Winchester railroad depot ; Stephens swore and the other man returned ; I think it was Brown's son ; Stephens was shot before he fired back ; Thompson, one of Brown's men, was a prisoner on the bridge.

[Brown here cried over the circumstances connected with the death of Thompson.]

Witness—I was not there, and did not see the last ; the last I saw of Thompson he was a prisoner with the Ferry people on the bridge ; Moore, Burkhardt, Anderson, and twenty or thirty others were there ; Mr. Beckham was killed at or about the time Thompson was taken ; did not return to the engine-house ; witness's object was to prevent unnecessary shedding of blood ; went out at the request of Brown to use his influence for that purpose.

*James Beller*, sworn—Was at the Galt House with Chambers on Monday morning ; Chambers fired, and I saw the man whom he shot lying there ; did not know the man ; supposed it was Stephens ; did not see any one with him when shot ; Stephens was shot before Captain Botts' company reached the Galt House.

Mr. Green stated to the Court that he desired to bring out testimony relative to the shooting of Thompson, one of the insurgents on the bridge ; but the State objected to it unless Brown had a knowledge of that shooting.

Mr. Hunter said there was a deal of testimony about Brown's forbearance and not shooting citizens, that had no more to do with this case than the dead languages. If he understood the offer, it was to show that one of those men, named Thompson, a prisoner, was dispatched after Beckham's death. The circumstances of the deed might be such as he himself might not at all approve. He did not know how that might be, but he desired to avoid any investigation that might be used. Not that it was so designed by the respectable counsel employed in the case, but because he thought the object of the prisoner in getting at it was for out-door effect and influence. He

therefore said if the defence could show that this prisoner was aware of these circumstances, and the manner in which that party was killed, and still exerted forbearance, he would not object. But unless the knowledge of it could be brought home to the prisoner and his after conduct, he could not see its relevancy.

Mr. Botts observed that they had already proved that for hours after that, communications were held between the parties.

The Court thought these facts admissible as evidence.

Mr. Hunter (the witness) was recalled—After Mr. Beckham, who was my grand-uncle, was shot, I was much exasperated, and started with Mr. Chambers to the room where the second Thompson was confined, with the purpose of shooting him. We found several persons in the room, and had levelled our guns at him, when Mrs. Foulke's sister threw herself before him, and begged us to leave him to the laws. We then caught hold of him, and dragged him out by the throat, he saying : "Though you may take my life, 80,000,000,000 will rise up to avenge me, and carry out my purpose of giving liberty to the slaves. We carried him out to the bridge, and two of us, levelling our guns in this moment of wild exasperation, fired, and before he fell, a dozen or more balls were buried in him ; we then threw his body off the tressel work, and returned to the bridge to bring out the prisoner, Stephens, and serve him in the same way ; we found him suffering from his wounds, and probably dying ; we concluded to spare him, and start after others, and shoot all we could find ; I had just seen my beloved uncle and best friend I ever had, shot down by those villanous Abolitionists, and felt justified in shooting any that I could find ; I felt it my duty, and I have no regrets.

Wm. M. Williams, the watchman on the bridge, stated the particulars of his arrest and confinement in the watch-house ; Brown told the prisoners to hide themselves, or they would be shot by the people outside ; he said he would not hurt any of them ; Brown told Mr. Grist to tell the people to cease firing, or he would burn the town ; but if they didn't molest him, he wouldn't molest them ; heard two shots on the bridge about the time the express train arrived ; did not see Hayward killed.

Brown—State what was said by myself, and not about his being shot.

Williams—I think you said that if he had taken care of himself, he would not have suffered.

*Reason Cross*, sworn—I prepared a proposition that Brown should retain possession of the Armory, that he should release us, and that the firing should stop.

Brown—Were there two written propositions drawn up while you were prisoner?

Cross—Yes, there was another paper prepared by Kitzmiller, and some others; I went out to stop the firing; a man went with me, and they took him prisoner and tied him; this was Thompson, who was afterwards taken out and shot; Brown's treatment of me was kind and respectful; heard him talk roughly to some men who were going in to where the blacks were confined.

Several witnesses for the prisoner were here called, and did not answer the subpoenas. They had not been returned.

Brown arose from his mattress, evidently excited, and standing on his feet, addressed the Court, as follows :

*May it Please the Court* : I discover that, notwithstanding all the assurances I have received of a fair trial, nothing like a fair trial is to be given me, as it would seem. I gave the names as soon as I could get at them, of the persons I wished to have called as witnesses, and was assured that they would be subpoenaed. I wrote down a memorandum to that effect, saying where those parties were; but it appears that they have not been subpoenaed as far as I can learn; and now I ask if I am to have anything at all deserving the name and shadow of a fair trial, that this proceeding be deferred until to-morrow morning; for I have no counsel, as I before stated, in whom I feel that I can rely, but I am in hopes counsel may arrive who will attend to seeing that I get the witnesses who are necessary for my defence. I am myself unable to attend to it. I have given all the attention I possibly could to it, but am unable to see or know about them, and can't even find out their names; and I have nobody to do any errand, for my money was all taken when I was sacked and stabbed, and I have not a dime. I had two hundred and fifty or sixty dollars in gold and silver taken from my pocket, and now I have no possible means of getting anybody to go my errands for me, and I have

not had all the witnesses subpoenaed. They are not within reach, and are not here. I ask at least until to-morrow morning to have something done, if anything is designed; if not, I am ready for anything that may come up.

Brown then lay down again, drew his blanket over him, closed his eyes and appeared to sink in tranquil slumber.

Mr. Hoyt, of Boston, who had been sitting quietly all day at the side of Mr. Botts, arose amid great sensation, and addressed the Court as follows:

*May it please the Court:* I would add my voice to the appeal of Mr. Brown, although I have had no consultation with him. that the further hearing of the case may be postponed until morning. I would state the reason of this request. It was that I was informed, and had reason to believe, that Judge Tilden of Ohio was on his way to Charlestown, and would undoubtedly arrive at Harper's Ferry at 7 o'clock to-night. I have taken measures to insure that gentleman's arrival in this place to-night; if he reaches the Ferry. For myself, I have come from Boston, travelling night and day, to volunteer my services in defence of Brown. I could not undertake the responsibility of his defence, as I am now situated. The gentlemen who have defended Brown acted in an honorable and dignified manner in all respects, so far as I know, but I cannot assume the responsibility of defending him myself for many reasons. First it would be ridiculous in me to do it, because I have not read the indictment through—have not, except so far as I have listened to the case and heard counsel this morning, got any idea of the line of the defence proposed, and have no knowledge of the criminal code of Virginia, and no time to read it. I had no time to examine the questions arising in this defence, some of which are of considerable importance, especially that relative to the jurisdiction over the Armory grounds. For all these reasons, I ask the continuation of the case till to-morrow morning.

Mr. Botts—In justice to myself I must state that, on being first assigned as counsel to Mr. Brown, I conferred with him, and at his instance took down a list of the witnesses he desired subpoenaed in his behalf. Though it was late at night, I called up the sheriff, and informed him that I wished subpoenas

to be issued early in the morning. This was done, and there are here Messrs. Phelps, Williams and Grist, and they have been examined.

Sheriff Campbell stated that the subpoenas were placed in the hands of an officer, with the request to serve them at once. He must have served them, as some of the witnesses are here. The process has not been returned, and may have been sent by private hands and failed to arrive.

Mr. Botts thought they had shown, and he was confident he spoke the public sentiment of the whole community, when he said they wished Mr. Brown to have a fair trial.

Mr. Hunter—I do not rise for the purpose of protracting the argument, or interposing the slightest impediment in the way of a fair trial. This is fair. Whether it was promised to Brown or not, it is guaranteed by our laws to every prisoner; and, so far as I am concerned, I have studiously avoided suggesting anything to the Court which would in the slightest degree interfere with it. I beg leave to say, in reference to this application, that I suppose the Court, even under these circumstances, will have to be satisfied in some way, through counsel or otherwise, that this testimony is material testimony. So far as any witness has been examined, the evidence relates to the conduct of Captain Brown in the treating of his prisoners with leniency, respect and courtesy, and this additional matter, that his flags of truce—if you choose to regard them so—were not respected by the citizens, and that some of his men were shot. If the defence choose to take that course, we are perfectly willing to admit these facts in any form they desire. Unless the Court shall be satisfied that this testimony (which, I have no doubt, is every particle of it here), which could be got, is really material to the defence, I submit that the application for delay on that score should be granted. Some of these witnesses have been here, and might have been asked to remain. A host of witnesses have been here, and have gone away without being called on to testify. I simply suggest that it is due, in justice to the Commonwealth, which has some rights, as well as the prisoner, that information be given to the Court, showing that additional testimony is relevant to the issue. The simple statement of counsel I do not think would be sufficient.

Mr. Green arose, and said, Mr. Botts and myself will now with-

draw from the case, as we can no longer act in behalf of the prisoner, he having got up now and declared here that he has no confidence in the counsel who have been assigned him. Feeling confident that I have done my whole duty, so far as I have been able, after this statement of his, I should feel myself an intruder upon this case were I to act for him from this time forward. I had not a disposition to undertake the defence, but accepted the duty imposed on me, and I do not think, under these circumstances, when I feel compelled to withdraw from the case, that the Court could insist that I should remain in such an unwelcome position.

Mr. Harding—We have been delayed from time to time by similar applications, in the expectation of the arrival of counsel, until we have now reached the point of time when we are ready to submit the case to the jury upon the evidence and the law, when another application arises for a continuance. The very witness that they now consider material, Mr. Dangerfield, came here, summoned by ourselves, but deeming that we had testimony enough, we did not examine him.

The Court—The idea of waiting for counsel to study our code through, could not be admitted; as to the other ground, I do not know whether the process has been executed or not, as no return has been made.

Mr. Botts—I have endeavored to do my duty in this matter, but I cannot see how, consistently with my own feelings, I can remain any longer in this case, when the accused whom I have been laboring to defend, declares in open court that he has no confidence in his counsel. I make this suggestion, that as I now retire from this case, the more especially since there is now here a gentleman from Boston, who has come on to volunteer his services for the prisoner, that the Court allow him this night for preparation. My notes, my office, and my services are at his command. I will sit up with him all night to put him in possession of the law and facts in relation to this case. I cannot do more; and in the mean time, the sheriff can be directed to have the other witnesses here to-morrow.

The Court would not compel the gentleman to remain on the case, and accordingly granted the desired postponement, and adjourned at 6 o'clock.

## FOURTH DAY.

The Court met at 10 o'clock.

The Judge announced that he had received a note from the new counsel of the prisoner, requesting a delay for a few minutes, to enable them to have an interview with the prisoner. He would accordingly wait a short time.

Soon afterward, Brown was brought in, and took his usual recumbent position in bed.

Samuel Chilton, of Washington City, appeared as additional counsel for the prisoner, and was qualified.

Henry Griswold, of Cleveland, Ohio, was introduced to the Court as counsel for the prisoner, and qualified.

Mr. Chilton thought it was due to himself to make an explanatory statement before the trial proceeded. Yesterday he was very unexpectedly called upon to come here, and aid in the defence of the prisoner. Knowing from the newspapers that the trial was in progress, he took time to consider and consult his friends as to the propriety of accepting the proposition. He would have had no hesitation if he had been spoken to in time, but his friends advised him to come, and he did so with the expectation of merely assisting the gentlemen already conducting the defence. Upon reaching here, he found that they had withdrawn from the case, and he then hesitated about undertaking it; but upon consultation with the prisoner and his friends here, they insisted he should do so, and he would do the best he could, not feeling at liberty, under the circumstances, to refuse. These circumstances, however, would render it impossible for him to discharge the full duty of counsel, not having had time to read the indictment or examination already given. He made no motion for delay; this was a matter entirely within the discretion of the Court, and if the judge thought proper to refuse to grant any postponement, he knew it would be done under a sense of duty. Those extraordinary circumstances would also render it impossible for his associate, Mr. Griswold, to discharge his full duty as counsel. A short delay of a few hours, if the Court thought proper to grant it, would enable them to make some preparation.

The Court stated that the trial must go on. Counsel had been assigned to the prisoner here, of his own selection, who had labored zealously in his behalf, and had withdrawn be-



cause the prisoner had yesterday evening declared in open Court that he had no confidence in them. No obstacle had at any time been thrown in the way of the prisoner's having an ample defence. If this was the only case of the kind before the Court, he would at once grant the request, but several similar cases remain to be disposed of. This term will very soon end, and it was his duty to endeavor to get through with all the cases, if possible, in justice to the prisoners, and in justice to the State. The trial must therefore proceed.

Mr. Hoyt remarked that the day before various papers in court were identified, for what purpose he knew not, but presumed he should be informed, some as being in Capt. Brown's handwriting, and some as bearing his indorsement. He had hastily examined those papers, and wished to object to some of them. The learned gentlemen associated with him in the trial had not examined them, but he supposed the Court would not regard that as material under the present ruling.

Mr. Hunter, interrupting—There is no need of argument about the matter. Designate those you wish to object to.

Mr. Hoyt—I desire to know the object of the counsel in introducing those papers.

Mr. Hunter—The papers will speak for themselves. If you will designate which of them you object to, we will go on at once.

Mr. Hoyt—I object to the autobiography of Capt. Brown, as having no bearing on this case.

Mr. Hunter—I withdraw it.

Mr. Hoyt—I object to the letter of Gerrit Smith.

Mr. Hunter—I withdraw that too.

Mr. Hoyt—I handed to the clerk, last night, a list of names we wished summoned as witnesses—Samuel Strider, Henry Ault, Benjamin Mills, John E. P. Dangerfield, and Captain Simms. I got a dispatch just now, informing me that Capt. Simms had gone to Frederick, and would return in the first train this morning, and come on to Charlestown this afternoon. I should like to inquire whether the process had reached Capt. Simms at Harper's Ferry?

Sheriff Campbell replied that the officer stated that Capt. Simms had gone to Frederick.

Mr. Hunter—He was here yesterday. I hope we will proceed with some other witnesses.

*John P. Dangerfield* was called, and testified that he was an officer of the Armory. He was a prisoner in the hands of Captain Brown at the engine-house. Negotiations were going on for the release of all the prisoners before the firing commenced. About a dozen black men were there, armed with pieces which they carried most awkwardly and unwillingly. During the firing, they were lying about asleep, some of them having crawled under the engines. Witness was free to say, that from the treatment of Captain Brown, he had no personal fear of him or his men during his confinement. Saw one of the men shot in the engine-house. He fell back, exclaiming, "It's all up with me," and died in a few moments. This man, he learned, was one of Capt. Brown's sons. Saw another young man who came in wounded, and commenced to vomit blood. He was also a son of Captain Brown, and was wounded while out with Mr. Kitzmiller. Prisoner frequently complained that his men were shot down while carrying a flag of truce.

Mr. Hunter complained that they were going over again the same facts that were elicited; and all this was freely admitted by the defence.

Mr. Hoyt said that he regarded it as the only feasible line of defence to prove these facts. It was the duty of counsel to show, if possible, that Capt. Brown was not guilty of treason, murder, or insurrection, according to the terms of this indictment. We hope to prove the absence of malicious intention.

Mr. Hunter was frank to admit that he could not but regard this course as merely calculated to waste time.

Mr. Hoyt would remind the Court that the course being pursued was not only in accordance with their conviction of duty, but in accordance with the express commands of their client.

The Court remarked that the counsel was responsible to the Court to conduct the case according to the rules of practice.

Mr. Hoyt thought the language of the prosecution was calculated to impugn the honor of the counsel for the prisoner.

Mr. Hunter—Nothing of the kind was intended. It is presumed the gentlemen will conduct the case in accordance with their duty as counsel, and their responsibility to the Court.

Mr. Dangerfield, resumed—Heard some conversation by Captain Brown as to having it in his power to lay the town

in ashes and carrying off the women and children, but that he had refrained from so doing ; heard him make no threats that he would do so ; the only threat I heard from him was at the commencement of the storming of the engine-house ; he then said we must all take equal shares with him, that we could no longer monopolize the places of safety ; he, however, made no attempt to deprive us of the places we had taken ; Brown promised safety to all descriptions of property, except slave property ; at the time of the assault by the marines, one of the men cried out for quarter ; he had heard the same man, in a conversation with Brown during the night, ask him if he was committing no treason against his country in resisting the marines, to which Brown replied that he was ; the man then said, "I'll fight no longer"—that he thought he was merely fighting to liberate the slaves ; after the attack was made on the engine-house, two of Brown's men cried for quarter, and laid down their arms, but after the marines burst open the door, they picked them up again and renewed the fight ; after the first attack, Capt. Brown cried out to surrender, but he was not heard ; did not see him fire afterward ; saw Coppie attempt to fire twice ; but the caps exploded ; witness saw Brown wounded on the hip by a thrust from a sabre, and several sabre cuts on his head ; when the latter wounds were given, Capt. Brown appeared to be shielding himself, with his head down, but making no resistance ; the parties outside appeared to be firing as they pleased.

*Mayor Mills*, master armorer, sworn—Witness was one of the hostages of Capt. Brown, confined in the engine-house ; before the general firing commenced, negotiations were pending for the release of the prisoners ; a paper was drawn up, embracing certain terms, and borne by Mr. Brua to the citizens outside ; the terms were not agreed to ; the last time Mr. Brua was out, there was severe firing, which, I suppose, prevented his return ; Brown's son went out with a flag of truce, and was shot ; he came back wounded ; the prisoner attended him, and gave him water ; heard Brown frequently complain that the citizens had acted in a barbarous manner ; he did not appear to have any malicious feelings ; he undoubtedly seemed to expect reinforcements ; said it would soon be night, and he would have more assistance ; his intentions were to shoot nobody unless they were carrying or using arms ; if they

do, let them have it; this was while the firing was going on.

Capt. Brown here asked the witness whether he saw any firing on his part which was not purely defensive.

Witness—It might be considered in that light, perhaps; the balls came into the engine-house pretty thick.

Question by Counsel—Did you not frequently go to the door of the engine-house?

No, indeed. [laughter.]

A general colloquy ensued between the prisoner, lying on his cot, and the witness, as to the part taken by the prisoner in not unnecessarily exposing his hostages to danger. No objection was made to Brown's asking these questions in his own way, and interposing verbal explanations relative to his conduct. The witness generally corroborated his own version of the circumstances attending the attack on the engine-house, but could not testify to all the incidents that he enumerated. He did not hear him say that he surrendered. Witness's wife and daughter were permitted to visit him unmolested, and free verbal communication was allowed with those outside. We were treated kindly, but were compelled to stay where we didn't want to be. Brown appeared anxious to effect a compromise.

*Samuel Snider*, sworn—This witness proceeded to detail the whole circumstances of the two days, with what he saw, what he thought, and what he heard. Nothing new was elicited. He confirmed the statement of the other witnesses, that Brown endeavored to protect his hostages, and constantly said that he wished to make terms more for their safety than his own.

Mr. Hoyt, at half-past one o'clock, complained of indisposition from the heat of the room, and asked that the usual recess for dinner be taken.

The Court then adjourned for one hour.

At 2 o'clock the Court re-assembled, and Mr. Griswold, taking his seat by the side of the prisoner, prepared to question the witnesses, and to receive from him such suggestions in the course of the examination as he had to make.

*Capl. Simms*, commander of a volunteer company of Frederick, Md., sworn—The report came to Frederick that 750 blacks and abolitionists combined had seized Harper's Ferry;

witness started for the Ferry with the volunteers under command of Col. Shriver, and was glad to find their numbers were exaggerated after he reached there on Monday afternoon; the door of the engine-house was partially open, and witness was hailed from there; two shots had been fired from there; witness was hailed and went in; he met Mr. Dangerfield and others there; Capt. Brown said to witness that he had a proposition to make, to which he listened; he wanted to be allowed to go over the bridge unmolested, and we then might take him if we could; he had fought Uncle Sam before, and was willing to do it again; Brown complained that his men had been shot down like dogs, while bearing a flag of truce. Told him they must expect to be shot down like dogs if they took up arms in that way. Brown said he knew what he had to undergo before he came there—he had weighed the responsibility and should not shrink from it; he said he had full possession of the town and could have massacred all the inhabitants had he thought proper to do so; but as he had not, he considered himself entitled to some terms; Brown said he had shot no one who had not carried arms; I told him that Mayor Beckham had been killed, and that I knew he was altogether unarmed; he seemed sorry to hear of his death, and said, "I fight only those who fight me;" witness then told the prisoner that he did not think any compromise could be effected; Brown said he kept the hostages for his own safety; they did not appear to fear any injury from him or his men, but only from attacks from the outside; every man had a gun, and four-fifths of them were under no command; the military had ceased firing, but men who were intoxicated were firing their guns in the air, and others at the engine-house; Brown or any of his men could not have ventured outside the doors of the engine-house that night without being shot; saw Stephens in the hotel after he had been wounded, and shamed some young men who were endeavoring to shoot him as he lay in his bed, apparently dying; told them that if the man could stand on his feet with a pistol in his hand, they would all jump out of the window. Capt Simms' testimony was at great length, but little new was elicited.

On the conclusion of his testimony, Capt. Simms stated that he had returned here at the summons of the prisoner to testify in his behalf, with as great alacrity as he had come to tes-

tify against him. He had no sympathy for the acts of the prisoner ; for his movement, on the contrary, he would be one of the first to bring him to punishment. But he regarded Capt. Brown as a brave man, and being informed that he wanted him here as a witness, he returned with pleasure. As a southern man, he came to state the facts about the case, so that northern men would have no opportunity of saying that southern men were unwilling to appear as witnesses in behalf of one whose principles they abhorred.

*Israel Russell*, sworn—Was the bearer of a flag of truce from Brown's party to the citizens of the Ferry. His testimony was merely in corroboration of the facts stated by previous witness.

*Terence Burns*, sworn—Was taken prisoner by Capt. Cook and two others ; was one of the ten hostages confined in the engine-house ; Brown had five or six of his men there ; he did not give any reason to us why we were put there, except that it was for his own safety ; he said he did not think any attack would be made upon the engine-house while hostages were there.

Here the defence closed their testimony. None of the witnesses for the defence were cross-examined by the State.

Mr. Chilton, for the prisoner, rose and submitted a motion that the prosecution in this case be compelled to elect one count of the indictment and abandon the others. The indictment consists of four counts, and is indorsed thus: "An indictment for treason, and advising and conspiring with slaves and others to rebel;" the charge of treason is in the first, and the second count alleges a charge different from that which is indorsed on the back of the indictment, and which is upon record. The second count is under the following statute: "If a free person advise or conspire with a slave to rebel or make an insurrection, he shall be punished with death, whether such rebellion or insurrection be made or not."

But the second count of the indictment is that these parties, who are charged by the indictment, "conspired together, with other persons, to induce certain slaves, the property of the Messrs. Allstadt and Washington, to make rebellion and insurrection. There is a broad distinction between advising and conspiring with slaves to rebel, and conspiring with others to induce slaves to rebel. Whether he was to avail himself of

their irregularity by instruction from the Court to the jury to disregard this second count entirely, or whether it would be proper to wait until the conclusion of the trial, and then move an arrest of judgment, he left his honor to decide. He proceeded to argue the motion that the prosecution be compelled to elect one count and abandon the others, quoting Archibald's criminal pleading in support of his view. He further alluded to the hardship which rests upon the prisoner to meet various and distinct charges in the same trial. From the authority he read, it would be seen that in a case of treason, different descriptions of treason could not be united in the same indictment: high treason could not be associated with other treason. If an inferior grade of the same character could not be included in separate counts, still less can offences of higher grade. Treason in this country is high treason. Treason against the State of Virginia is treason against her sovereignty. We have no other description of treason, because treason can only be committed against sovereignty, whether that of the United States, or of a sovereign State.

Mr. Harding could not see the force of the objection made by the learned counsel on the other side. In regard to separate offences being charged, these were but different parts of the same transaction. Treason against the Government is properly made the subject of one of the counts. But we also have a count of murder, for it can hardly be supposed that treason can exist without being followed or accompanied by murder. Murder arose out of this treason, and was the natural result of this bloody conspiracy; yet, after all the evidence has been given on all these points, the objection is made that we must confine ourselves to a single one of them. He hoped that no such motion would be granted.

Mr. Hunter followed on the other side. He replied to the argument of Mr. Chilton, saying that the discretion of the Court compelling the prosecution to elect on one count in the indictment, is only exercised where great embarrassment would otherwise result to the prisoner. As applied to this particular case, it involved this point, that notwithstanding the transaction, as has been disclosed by the evidence, be one transaction, a continued, closely connected series of acts, which, according to our apprehension of the law of the land, involves the three great offences of treason, conspiring with

and advising slaves to make insurrection, and the perpetration of murder ; whether, in a case of this character, it is right and proper for the Court to put the prosecution upon their election, as to one of the three, and bar us from investigation of the two others, although they relate to facts involved in one grand fact. Notwithstanding the multiplicity of duties devolving upon the prosecutor and assistant prosecutors, yet we have found time to be guarded and careful in regard to the mode of framing the indictment. It is my work, and I propose to defend it as right and proper. He then proceeded to quote Chitty's Criminal Law and Robinson's Practice to prove that the discretion of the Court there spoken of in reference to the furthering of the great object in view was the attainment of justice.

Where the prisoner is not embarrassed in making his defence, this discretion is not to be exercised by the Court, and no case can be shown where the whole ground of the indictment referred to one and the same transaction. This very case in point would show the absurdity of the principle, if it were as broad as contended for by his learned friend. As to the other point of objection, it was too refined and subtle for his poor intellect.

Mr. Chilton responded. In order to ascertain what a party is tried for, we must go to the finding of the Grand Jury. If the Grand Jury return an indictment charging the party with murder, finding a true bill for that, and he should be indicted for manslaughter or any other offence, the Court would not have jurisdiction to try him on that count in the indictment. And the whole question turns on the construction of the section of the statute which has been read, viz. : whether or not advising or conspiring with slaves to rebel is a separate and distinct offence from conspiring with other persons to induce it.

The Court said that the difference might perhaps be taken advantage of to move an arrest of judgment ; but the jury had been charged and had been sworn to try the prisoners on the indictment as drawn. The trial must go on, and counsel could afterward move an arrest of judgment. As to the other objection, the Court made this answer : " The very fact that the offence can be charged in different counts varying the language and circumstances, is based upon the idea that dis-



inct offences may be charged in the same indictment. The prisoners are to be tried on the various counts as if they were various circumstances. There is no legal objection against charging various crimes in the same indictment. The practice has been to put a party upon election where the prisoner would be embarrassed in his defence ; but that is not the law.

In this case, these offences charged are all part of the same transaction, and no case is made out for the Court to interfere and put the parties upon an election.

Mr. Chilton said he would reserve the motion as a basis for a motion in arrest of judgment.

Mr. Griswold remarked that the position of all the present counsel of the prisoner was one of very great embarrassment. They had no disposition to interfere with the course of practice, but it was the desire of the defendant that the case should be argued. He supposed that counsel could obtain sufficient knowledge of the evidence previously taken by reading notes of it. But it was now very nearly dark. If it was to be argued at all, he supposed the argument for the Commonwealth would probably occupy the attention of the Court until the usual time for adjournment, unless it was the intention to continue with a late evening session. From what had heretofore transpired he felt a delicacy in making any request of the Court, but knowing that the case was now ended, except for mere argument, he did not know that it would be asking too much for the Court to adjourn after the opening argument on behalf of the prosecution.

Mr. Hunter would cheerfully bear testimony to the unexceptionable manner in which the counsel who had just taken his seat had conducted the examination of witnesses to-day. It would afford him a very great pleasure in all ordinary cases to agree to the indulgence of such a request as the gentleman had just made, and which was entirely natural. But he was bound to remember, and respectfully remind the Court, that this state of things, which places counsel in a somewhat embarrassing position in conducting the defence, is purely and entirely the act of the prisoner. His counsel will not be responsible for it; the Court is not responsible for it, but the unfortunate prisoner is responsible for his own act in dismissing his faithful, skillful, able and zealous counsel on yesterday after-

noon. He would simply say that not only were the jurors kept away from their families by their delays, but there could not be a female in this county who, whether with a good cause or not, was not trembling with anxiety and apprehension. While their courtesy to the counsel and humanity to the prisoner should have due weight, yet the commonwealth has its rights, the community has its rights, the jury have their rights, and it was for his Honor to weigh these in opposite scales, and determine whether we should not go on and bring this case to a close to-night. We had until twelve o'clock to do it in.

Mr. Chilton said their client desired that they should argue his case. It was impossible for him to do so now, and he could not allow himself to make an attempt at argument on a case about which he knew so little. If he were to get up at all, it would be for the unworthy purpose of wasting time. He had no such design ; but having undertaken this man's cause, he very much desired to comply with his wishes. He would be the last man in the world to subject the jurors to inconvenience unnecessarily, but although the prisoner may have been to blame, may have acted foolishly, and may have had an improper purpose in so doing, still he could not see that he should therefore be forced to have his case submitted without argument. In a trial for life and death, we should not be too precipitate.

The Court here consulted with the jurors, who expressed themselves very anxious to get home.

His Honor said he was desirous of trying this case precisely as he would try another, without any reference at all to outside feeling.

Mr. Hoyt remarked that he was physically incapable of speaking to-night, even if fully prepared. He had worked very hard last night to get the law points ; until he fell unconscious from exhaustion and fatigue. For the last five days and nights he had only slept ten hours, and it seemed to him that justice to the person demanded the allowance of a little time in a case so extraordinary in all respects as this.

The Court suggested that we might have the opening argument for the prosecution to-night, at any rate.

Mr. Harding would not like to open the argument now, unless the case was to be finished to-night. He was willing,

however, to submit the case to the Jury without a single word, believing they would do the prisoner justice. The prosecution had been met not only on the threshold, but at every step with obstructions to the progress of the case. If the case was not to be closed to-night, he would like to ask the same indulgence given to the other side, that he might collate the notes of the evidence he had taken.

The Court inquired what length of time the defence would require for argument on Monday morning. He could then decide whether to grant the request or not.

After consultation, Mr. Chilton stated that there would be only two speeches by himself and Mr. Griswold, not occupying more than two hours and a half in all.

Mr. Hunter again entered an earnest protest against delay.

The Court replied, "Then you can go on yourselves."

Mr. Harding then commenced the opening argument for the Commonwealth, and spoke only for about forty minutes. He reviewed the testimony as elicited during the examination, and dwelt for some time on the absurdity of the claim or expectation of the prisoner—that he should have been treated according to the rules of honorable warfare. He seemed to have lost sight of the fact that he was in command of a band of murderers and thieves, and had forfeited all right to protection of any kind.

The Court then adjourned at 5 o'clock, to meet again at nine o'clock Monday morning.

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#### FIFTH DAY.

The prisoner was brought in, and the trial proceeded without delay.

The court house and its approaches were densely crowded.

Mr. Griswold, on behalf of the defence, said:—May it please your Honor and Gentlemen of the Jury—Since the adjournment of the Court on Saturday evening, I have paid such attention to the case as I reasonably could, and such as will enable me to condense my remarks within the shortest possible space, in accordance with the arrangements mutually entered into. I feel as though an hour was, however, a very limited

time to discuss the many questions that are intimately connected with the consideration of this important case. At the same time I feel perfectly satisfied that I can do more justice to it, with the opportunity afforded me by the delay that was kindly granted by the Court, than I could possibly have done when I was so unprepared for it. Gentlemen, the prisoner at the bar is charged with four offences, or rather I may say there are four counts charged against him, three of which are for distinct offences, one of which is charged in two different counts. Counsel for the State did not specify particularly the grounds upon which he did this. First, however, the defendant is charged with treason, and is so charged in nearly all the forms of treason required by law. In the second count he is charged with conspiring, and is thus indicted with certain other persons for conspiring to induce slaves to rebel and make insurrection. In the same count he is charged with aiding and advising slaves to rebel and make insurrection, etc. In the third count he is charged with murder—with willful and deliberate murder. In the fourth count he stands charged, with four other persons, three of whom are charged with murder, and the fifth with aiding and abetting, and that therefore they were all guilty of the crime of murder.

There is one crime preferred here against the prisoner to which I will briefly advert, in a manner personal to myself. I do not know, although I am a stranger, that it is necessary for me to say that I have no sympathy whatever with any man who could be guilty of such an offence as is charged here. I would not say this but for the fact that I am an utter stranger here; and having made that remark, perhaps it may be proper for me to make one more. Allusion was made by witnesses to the state of the public feeling prevailing in the North upon this subject. A similar allusion was made by the Commonwealth's attorney in his remarks, which he submitted to you the other day. It is therefore not out of place for me to say, that so far as I know the state of the public sentiment in the North, and I think I know something of it, for my business and calling bring me into association with all classes of people—it is, therefore, I say, not inappropriate for me to say that there is no sentiment in the North in accordance with that of the defendant, or anybody else who may be guilty of the offences charged in that indictment. There may be those, here

and there, who feel that similar scenes to those which lately occurred, may from time to time be brought about; but whether the result of interference from abroad, or the spontaneous outgushing from within the southern States themselves, it is a subject of deep regret that there should be any fear or danger of such things. And while they believe that such things may happen, they believe it with regret; and it is their anxious hope that these feelings which they deem to exist, may be removed peacefully and effectually.

But, gentlemen, I stand here to defend this man as I would any other man charged with offences against this State, when called upon to do so. I ask you, gentlemen, to take the testimony in view of the law as given you by the Court, and to weigh it carefully and deliberately. I say to you, not in the language of the prosecuting attorney, to glide over it, but to investigate it clearly, and say whether the offences charged against the prisoner have been committed by him or not, and whether they are sustained by the evidence. I feel considerable embarrassment in coming before a jury to defend a prisoner against charges of this kind under circumstances which are patent to you all. I know that you have been selected for the high duty as men competent to try the issue, and as men of sufficient integrity and honesty of purpose to rise above the prejudices, the passions and the feelings of every description which surround you. But yet, you are in the midst of a community which, I am informed since I took part in this trial, is greatly excited; and even since I came into this court that fact has been brought to your mind.

The counsel for the prosecution told you, the other day, that anxious faces were hanging around the court-house, invoking a verdict of condemnation upon the prisoner. His distinguished associate told you that not a lady in the county felt herself safe while things were in the condition they were now in. If this be so, then I say to you that the greater caution is required at your hands in giving this question a fair and impartial consideration. I was rejoiced to hear that the universal sentiment throughout the country is that the unfortunate man should have a fair trial. I was rejoiced to see that sentiment echoed throughout the whole State, through your Governor, that he should have a fair trial. I have no doubt that it is the firm intention of every member of the jury to give him a fair

and impartial trial. But, gentlemen, what is meant by a fair trial? It is not that the mere forms of law should be invoked, because that is well known, no matter what the evidence may be—because, I say, it is well known that these forms are but the pathway to the scaffold. I do not mean that the mere forms of a fair trial should be observed. Why? Because they may be used merely to conceal, for the time being, the gallows that looms behind. I do mean that he shall have not only the forms of a fair trial, but that every principle of law and justice shall be made available and every particle of evidence introduced by himself or by the State shall get its fair weight and consideration in his behalf.

A man charged with the grave offences alleged against the prisoner, must be convicted only by the clearest and the most satisfactory and conclusive evidence, such as cannot leave a reasonable doubt on the mind of any one juror. I propose, therefore, gentlemen, briefly to consider the evidence as it applies to the law, which I hold should be applicable in this case. In doing so, I cannot go into details, but can advert only to the evidence generally, asking you, when you retire to your room, to inquire whether this, that, or the other circumstance has been proved, which is essential to convict the prisoner. My first remark has relation to all the offences charged in the indictment; and it is set forth upon the record that all those offences were committed within the jurisdiction of this Court, and within the county of Jefferson, in this State. Now, gentlemen, this is a matter to be proven. I have read the notes of the evidence, and I can find no proofs whatever upon this point. There has been proofs that the offences said to have been committed took place at Harper's Ferry, or in the neighborhood of Harper's Ferry. But where is Harper's Ferry? The Court takes judicial notice of something which it says occurred in a certain place within its jurisdiction. But this must be proved, and I maintain it has not been proved.

Therefore I say, that the jury impanelled to try the matter set forth in this indictment must have every fact submitted to them proved beyond a doubt. They cannot take, and ought not to take, anything on trust. They know nothing, except that which is detailed in evidence. Not that every fact essential must be proved, but those facts must be proved from which inferences may legitimately be drawn. I say, therefore,

gentlemen, you have no right, from any knowledge you may have obtained elsewhere, to say that these offences, as alleged, have been committed within the limits of the county of Jefferson: and I ask that the Court will so direct you. In my State, the form is to ask the Court to charge the jury; here, I believe, the requisition is to instruct the jury. We demand, on behalf of the prisoner, that the jurisdiction be proven. We maintain that it is as necessary to do so, as to prove the firing of a gun, the seizing of a slave, or the commission of any of the acts laid in the indictment. If any of the offences are committed elsewhere than within the jurisdiction of this Court, then the charges set forth have no existence, upon which this prisoner is sought to be convicted. Therefore, I say again, that this assumed jurisdiction must be proven. Having stated thus much, I will proceed to other points.

The first offence charged is treason. Here I again raise a point without designing to argue it. I state it that it may be understood that both myself and the learned counsel with whom I am associated agree entirely in our views upon that point, leaving it to be discussed at length by him. I allude to it now merely to afford the learned counsel, who will close the arguments for the State, ample time to reflect upon and consider it. The charge laid in the first count is treason.

Now, my point is that no man is guilty of treason, unless he be a citizen of the State or Government against which the treason so alleged has been committed. I state the point, and I say to you, gentlemen, if the Court rules, as we claim it is bound to do, that this man is not a citizen, that consequently he cannot be guilty of treason against the State. Rebellion means the throwing off allegiance to some constituted authority. But we maintain that this prisoner was not bound by any allegiance to this State, and could not, therefore, be guilty of rebellion against it. But I will pass from this part of the subject. Now, with regard to treason, several things are said to constitute treason, one of which is levying war against the State; and that is one of the charges laid in the indictment. But, gentlemen, there is a great difference between levying war and resisting authority; and this is a matter I particularly wish you to bear in mind. A man may resist authority with ever so much violence, and bloodshed may ensue from such resistance, but that is not treason. It may hap-

pen, and it does happen, where men congregate together for the purpose of perpetrating a crime. They associate for that purpose, and they have their rules and regulations, and all the elements of an organization, and yet if assailed in the commission of crime and they defend themselves to the utmost and with great sacrifice to the lives of themselves and their fellow-citizens whom they resist, that is resistance, but that is not levying war. And how is it here? These men, it appears, assembled at a certain place, as the defendant himself indeed admits they did, and from that admission he does not shrink, or the purpose of running away with slaves. That is a crime, and for that crime he is amenable to the laws of your State, and for which you can punish him to the extent of that law.

The facts, then, are these: For the purpose of carrying out his illegal design—the carrying away of slaves from the State—he takes temporary possession of the Arsenal and public buildings at Harper's Ferry, and while there attempts were made by the citizens, for which I do not blame them, to attack them and drive them off. It was then, and in resisting these attempts on the part of the citizens, that this man and those associated with him had recourse to arms, and in the conflict which ensued, blood was shed and lives were taken. But that is not levying war against the Commonwealth of Virginia, although it was resisting with arms that which was claimed to be the lawful authority of Virginia, seeking to arrest these men assembled in violation of law. But such things have happened frequently. You have heard of the jails of the country being broken open by armed bands, and persons confined therein, under the shelter and protection of the law, dragged from them and executed in defiance of the law. There have been instances where men acquitted by a jury of the country of the crime alleged against them, have been thus executed, the jail broken open and the authority of the sheriff trampled under foot; but this was not levying war.

Resisting with arms the constituted authority of the State is not levying war, although murder may arise out of it, though not at first contemplated. In violent acts of this kind death may ensue in commission of the crime, even when bloodshed was not necessarily contemplated by the offenders. In many States of the Union we have, as well as here, cases of kidnapping, and we have instances of resistance to the author-



ity of the law seeking to arrest the person charged, and bloodshed has ensued; but this is not levying war—it is simply resisting the authority of the law.

Now let us inquire whether the offences charged in this indictment are a levying of war, or simply resisting with a high hand the constituted authorities of the land. It is said that there was an organized government, and that charge is sought to be sustained by evidence, particularly by a pamphlet that has been produced, and which was taken from the person of the prisoner. But, gentlemen, it would not necessarily follow that overthrowing the Commonwealth of Virginia was contemplated by anything which appears in that pamphlet. How many harmless organizations have existed in the world at various times, surrounded with all the outside forms and machinery of government! aye, even as harmless things as debating societies have been so organized, congresses created, resolutions and laws discussed, and any one reading the bulletins and reports issued from time to time from these associations would say, why here is a miniature government within the very limits of our State. No matter what name they may take, no matter under what form of organization they are bound together, no matter what offices they may create, it is not a proof of crime against the State.

These men named in the indictment have been characterized by the attorney as a marauding, thieving, murderous clan; and surely it is not such people that could subvert a government and raise another upon its ruins. Such associations as I allude to, have their laws and regulations, and even they prescribe death for violation of their laws. But that does not contemplate the overthrow of any existing legitimate government, but only an association for governing, controlling and directing themselves in their dealings with one another, but having no purpose or idea whatever of overthrowing, usurping or destroying the legitimate government. But I will remark further, with reference to this matter, that you cannot find this man guilty of treason except you have it proved incontestably before you that he was associated with others for the purpose and with the object of overthrowing and of organizing a government, and to subvert the Commonwealth of Virginia.

Now, I say with reference to that book so much relied upon

by the prosecution, that if it proves anything it proves that the attempt, if any such was designed, was to establish a government in opposition to the Government of the United States, and not to subvert the Commonwealth of Virginia. All the terms used, all the officers to be appointed, have reference to a government like the United States. The pamphlet does not say what territory this association, or government, is to exercise jurisdiction over. Its proposed empire is not defined. It has fixed no territorial limits, and, therefore, if it means anything at all, it alludes to the government of the whole United States in general, and not to this State, or any other in particular. But as this book or code of laws has been put in evidence, I tell you, gentlemen, that you must not select any particular part of it—you must take it all as evidence, every part of it must be taken, one part as much as another, except the prosecution produce evidence satisfactorily contradicting any portion of it. From the contents of that book it is clear that these men did not contemplate the overthrow of the State government, but simply an amendment or repeal of obnoxious laws, or what they deemed to be such. I speak of this matter because you are compelled to find that the prisoner was guilty of all those matters contained in the several counts. But they have failed in establishing any one of these charges.

The prosecution say that he is guilty of giving aid and comfort to the enemies of the Commonwealth, and that is the only specific charge they have made on fact. And how do they attempt to support it? Did not the prisoner, they say, actually send to the tavern and procure provisions and feed the enemies of the Commonwealth? Did he not feed the slaves, and are they not enemies of the State? Was not that act, therefore, furnishing aid and comfort to the enemy? I was surprised to hear this part of the subject commented upon. I was surprised that in that connection, by an association of ideas no doubt very ingenious and felicitous if they could be traced out, he burst forth into that sublime apostrophe to freedom which the prosecuting attorney delivered the other evening in tones and actions and language of such surpassing eloquence that none who heard him might be told that he had received his inspiration in the State which urns the ashes of Patrick Henry. And when I remember the cause we are here trying,

and the circumstances which surround it, I remember also the appeal that that gentleman made to you, presenting a daguerreotype to your view of the anxious faces which hung around the court, invoking a verdict on the prisoner. But that style of appeal was not confined to the prosecuting attorney alone. His distinguished associate, gentlemen, presented to you a touching picture of dishevelled tresses of frightened beauty, enough to excite the feelings and shatter the nerves of any one. I can but rejoice, gentlemen, that his stirring tones were not echoed from hill top to hill top, from mountain to mountain, to excite and spread alarm from one end of the State to the other; but that, on the contrary, they died away within these walls.

Gentlemen of the jury, the prisoner is charged with having given aid and comfort to the enemies of the State, and in despair, they are driven to rely upon this charge, for it is the only one specifically made. But I will leave this part of the case, and proceed. The prisoner is charged with conspiring with slaves to rebel and make insurrection. Here, again, we are bound to make the same distinction in regard to treason. There is a manifest distinction between the effort made to run away with slaves, or inducing them to run away, and an attempt to excite them to rebellion and insurrection. Now, what is meant by insurrection and rebellion? It means a rising up of slaves against the authority of their masters—not a running away, although freedom may be the ultimate object. But it means a rising up against the masters, against the whites, against the State. Insurrection contemplates riot, robbery, murder, arson, and all the crimes which follow insurrection, more especially a servile insurrection. Now, what are the facts of the case? I cannot discuss them; but I will ask you, as men disposed to do justice to the State, to sit down and inquire among yourselves if any one witness has testified of aught showing that Brown or his associates said or did anything to any one slave to induce him to rise in rebellion?

What was it that was really done in this matter? Slaves were taken possession of, and for a temporary purpose placed in the Arsenal or some of the public buildings at Harper's Ferry. But what was the evidence of Col. Washington himself, who testified more on this subject than any other person? He says that not a slave seemed to have a heart in the mat-

ter. The slaves themselves did nothing. They were taken there, and there they quietly remained. The only slave that lifted his hand was old Phil, Mr. Allstadt's servant, who, according to my recollection, and at the suggestion of Brown, the prisoner, drilled some port-holes in the wall. And let me here remark, that the law as regards rebellion is the same as regards treason. A man may be engaged in an illegal act; any body of men, any body of slaves may be so engaged, and they may resist the lawful authorities sent against them, even to the shedding of blood, and yet it is not rebellion nor treason. Let us suppose that a body of slaves are seeking to escape; they are aided in that attempt by a body of white men; their escape may be effected by white men—they are pursued by the authorities of the State, their capture is attempted—they resist, and defend themselves even to the loss of life; yet that does not constitute rebellion—they are amenable to punishment, but not to the penalty of rebellion. This is all I need to say upon this subject.

The next crime charged against the prisoner is murder. Now, there are nine specifications of murder in the first degree. Five of these come under the head of murder in the first degree as premeditated murder, which is punishable with death; four others, where death happens without it being the original intention of the party to commit murder, but which, however, come under the head of first degree, if the party was at the time in the commission of some other offence—such as rape, arson, robbery or burglary. If a party is engaged in the commission of any of these crimes, and death, though not designed, ensues, then the offender is liable to the penalty of death. Now, as regards the death of the citizens at Harper's Ferry, when they took place, the prisoner and his men were not engaged in the commission of any of these offences—such as arson, rape, robbery or burglary. If they were there in resistance to the authority of the laws of Virginia—if, while resisting that authority these deaths ensued, was there that premeditated malice aforethought which the law requires to make a man guilty of murder? There was one death ensued in the early part of the first night at Harper's Ferry, but how it happened no one knows—whether by accident or not. Nor can it be known, whether he was accidentally shot by one of Brown's party or by one of the citizens themselves. The night

was dark, and his death might have been accidental or otherwise; but now none can tell. I can only say as my client says to me on this subject: "Why should we shoot a negro?—that was not our object." And so I say.

Gentlemen, you cannot believe for one moment—you do not believe; the evidence will not allow you to believe; the law will not allow you to believe—that there was any malice or deliberate intention to shoot that negro, if he was shot by Brown's party at all; and, therefore, gentlemen, I shall pass that charge by without further comment. Should I be asked why this man should not be brought within the jurisdiction of the Commonwealth of Virginia so as to punish him—was he to go unquitted by justice for his offences?—my answer would at once be: No, gentlemen, not for one moment. All I ask of you is that he be charged and convicted according to your own laws. This Commonwealth of Virginia has made laws to protect her citizens—has made laws which hedge them round and protect them on every side. She has within the borders of her population made such laws as she deems all-sufficient for the protection of that species of property which some, perhaps, would wish to deprive her citizens of. But whatever may be done hereafter; whatever may be considered necessary for the protection of life and property in time to come, it is the boast of our institutions that no man can be punished beyond what the law allows. If the punishment is not severe enough; if it is not ample enough, broad enough, will the law rest until it is properly remedied? The law can be made and altered from time to time, so as to meet every emergency of the State. If, then, your rights, your interests, your property, your lives are not sufficiently protected, there is a power in this grand old Commonwealth sufficient to protect them at all times. We, however, have no *post facto* law. We punish no man but by virtue of the law as it exists at the time the alleged offence was committed. The prisoner at the bar is amenable to your laws. None can deny that. Frame your indictment against him to-day, charging him with enticing away your slaves, with interfering with that species of property, and his confessions are as thick as the leaves upon your forest trees that he was among you for that purpose. Frame your indictment, and the moment it is read he will plead guilty to it and submit to the penalty of his

crime without a murmur. But contemplating nothing more, dreaming of nothing more, he asks that the ægis of your laws may be thrown around him; not that he flinches from his fate, whatever that may be, but that he may not be stigmatized with guilt of crimes which he never contemplated, and which he believes in his heart he never committed. Of course as the law has been violated it must be vindicated—that I understand, and so does he. It is not true that public feeling and sentiment demand his immolation. It is not true that the public safety requires that he should be punished contrary to law. I speak thus in vindication of your own laws. I desire to preserve them unsullied and unstained, and that they be not perverted or distorted to suit this case, and to do a wrong instead of being applied to the punishment of what is wrong. I cannot shut my eyes to the fact that the statute and the law will not justify this man's conviction on the charges laid down in the indictment.

And why should this wrong be attempted? It is not true that there is any danger from the popular feeling. It is not true that there is danger to the State, either from within or without. Think of it, gentlemen, calmly and dispassionately. Here stands a man of whom you know something. He is a man of indomitable will, of sleepless energy of purpose, possessed of a spirit of perseverance that turns back from no difficulty, and endowed with a constitution that will endure and overcome everything. He, with all these qualities fitting him for such an enterprise, was engaged for months and months prosecuting it, and how did he succeed? Despite of all his efforts, despite those energies of mind and body which he threw into the work, and that unbending will of his which never faltered nor slept, he was able throughout the length and breadth of the United States to gather round his standard some twenty-one men, both black and white. Can it be supposed, gentlemen, for a moment, that there is fear to be apprehended from such a man, who, in the zenith of his power, when he had a name in history, and when something might be hoped for the cause in which he was engaged, could only, throughout the whole country, raise twenty-one men?

Is it to be supposed for a moment, I ask, now, when he is struck down to the earth, his few followers scattered or de-

stroyed—now, when the fact is known that the South is alarmed and armed in every direction ready to repel any enterprise of this kind, anything is to be feared? No, gentlemen, there is not the remotest danger of your ever again witnessing in your State anything akin to that which lately occurred. I do not know whether it is necessary for me to make these remarks. I know it is the duty of the jury to be blind to everything that bears not upon the case. Justice is represented as blind, seeing nothing, but dealing only with the facts which relate to the case. I believe you will take this case and deal with it fairly, and dispose of it under the ruling of the Court. We heard during the progress of this investigation, reference made to the conduct of some parties who took an active part in the late events at Harper's Ferry. But, gentlemen, the courage spoken of was physical courage, that courage which would induce men, whenever necessary, to face danger, no matter from what quarter it might come or in whatever form it might present itself. This courage commends itself to your highest regard. This is physical courage.

But there is another sort of courage which soars far above that which is mere physical. It is moral courage. It is a courage which will enable the true man, who is blessed with it, to raise himself above the influence of prejudice, self-interest, or popular excitement. It is a courage that withstands all temptations, and fearlessly rises above the petty considerations which influence more ignoble minds. It stands unflinchingly to meet the seething waves of popular excitement of commotion, and will not be turned aside from that which is humane and truthful. Now, gentlemen, if there be anything of this kind in your hearts—if you suppose there is anything more required than simple justice to be meted out to this unfortunate man—you have this day an opportunity of exhibiting that true moral courage of which I have spoken; and through the longest day you have to live you will value nothing more precious than the remembrance of the fact that you acted rightly, and justly, and mercifully in the day of danger.

You, gentlemen, have this day a great opportunity of evincing true moral courage by dealing with this case as I have feebly pointed out, if you can do so justly, and preserving your

oaths intact. Whatever you do, preserve your honor untarnished; preserve also the integrity and reputation of the Commonwealth, so long renowned for her justice, for truth and for chivalry unstained. I feel, gentlemen, that I have not done justice to the case: but I have said what I desired to say, situated as I am, closing simply with these remarks, which I make on behalf of my client, and at his request, that he has not a particle of exception to take to the testimony of the witnesses examined during the trial. He deems it only a wonder amid the excitement of these scenes, that the truth, as he declares it to be, should be so fully developed. He believed that the desire of one and all of the witnesses was to do him ample justice; that whenever they could speak in commendation of his (Brown's) humanity, in the means he had taken to spare the effusion of blood, and to preserve from harm his prisoners, they came cheerfully forward to do it. He desires also, as the least he can do, to express his grateful thanks to Captain Simms, who voluntarily came forward from another State, because, as he said, he wished to see justice done to a brave old man. Gentlemen, with these remarks I submit the case, as far as I am concerned, into your hands.

Mr. Chilton spoke of the embarrassment with which he undertook the case. He intended to do his duty faithfully, and had come to deal with the prisoner not as Captain Brown, leader of this foray, but simply as a prisoner under the charge of violating the law. If that law did not warrant a conviction, he should endeavor to make that appear to the jury. Still he would say that he had no sympathy with the prisoner. His birth and residence, until within a few years, had been in Virginia, in connection with the institution of slavery. Although now a resident of the District of Columbia, he had returned to his native State to spend the remainder of his days, and mingle his dust with her soil. No other motive operated on him than a disinterested one to do his duty faithfully. He regretted the excitement respecting the case, but was glad to hear the judge say on Saturday that he desired to try this case precisely like others. He desired, and the whole State, and the whole South desired, that the trial should be fair, and it had been fair. Circumstances had interrupted its progress.

Counsel were here without proper preparation, but indul-



gence had been granted, and they made no complaint. They should do the best they could under the circumstances, and could not complain of the excitement. It was natural. He hoped it would not interfere with the course of justice, or cast a stain upon the bar of the State. The jury had sworn they were unbiassed, and he presumed they would firmly discharge their oaths in bringing in a verdict. He could not understand, from the opening of the prosecution, on what grounds these charges against the prisoner were attempted to be sustained. The Commonwealth attorney indulged in a strain of abuse of the prisoner, and pronounced sentence on him without waiting the verdict of the jury, thus usurping the place of the judge. There were three distinct charges. The first was of treason. This was an offence at common law. The word is derived from a French word, signifying betrayal. Treason means betrayal of trust or confidence, the violation of fidelity or allegiance to the Commonwealth. He maintained that treason could not be committed against a Commonwealth except by a citizen thereof.

In the present case, the whole proof shows that this prisoner is not a citizen of Virginia, and he therefore cannot be found guilty of treason. The indictment charges the prisoners with committing every act composing treason. They are charged with levying war against the State, and exciting slaves to insurrection ; but there was no proof that they committed these acts charged—no proof that they resisted any process issued against them as violators of authority of the Commonwealth. They were rather guilty of resisting Colonel Lee, which was resistance to the Federal Government, and not to the Commonwealth. He had read carefully the prepared Provisional Constitution, and regarded it as ridiculous nonsense—a wild, chimerical production. It could only be produced by men of unsound minds. It defines no territory over which it is intended to operate, and says that we, that is the signers of the document, not all citizens of the United States, do establish the following Provisional Government. What is it? It is an association or copartnership; they are to own property in common and regulate its tenures; it did not contemplate a Government, but merely a voluntary association to abolish slavery; did not even undertake to levy taxes, which is essential to any Government. It does not appear that this

association was to be established in Virginia, or where it was to go into effect. This was not treason. Is it the adoption of a Constitution or establishment of a Government? By no means. Those parties had a mere imaginary Government to govern themselves, and nobody else, just like governing a military company or a debating society. Even if they intended to set up a government over the other, they did not do it.

There was a principle that every piece of evidence was to be construed most favorably to the accused, who should have the benefit of every doubt. In considering the evidence they must consider the whole of it—they must take the declarations of the prisoner in his own favor as well as against himself. Now look at the 46th Article of this Provisional Constitution, which expressly declares that the foregoing articles shall not be construed to encourage the overthrow of any State Government or General Government, and lead to a dissolution of the Union, but simply as amendment and repeal. This was on evidence before the jury, being submitted by the prosecution. Again the prisoner is charged with conspiring with slaves to make an insurrection. No proofs show that the slaves entered into a conspiracy, and unless that was the case there was no conspiracy. One party cannot conspire alone. Each charge is to be considered alone by the jury. If they believe the evidence, it does not warrant the conviction of treason, and they must consider the charge of conspiracy just as if no charge of treason had been made.

One count in the indictment was not to be brought in to aid another. He considered the prisoner had a right to be tried on one charge at a time, and entirely disconnected with any other. The Court had, however, overruled the motion on Saturday, and hence the importance of making this point clear to the jury, so that they might not confuse the various offences, and the evidence relating to each. Next as to murder. It was a very singular way of making an indictment. Five prisoners are charged with the murder of four men. That they might have jointly done it he could understand; but that they could severally have done it, he declared it was almost impossible for the prisoner to make a defence against such a charge. It was too loose and vague. By the laws of Virginia there was but one specific murder punishable as capital, and that was deliberate, premeditated murder. The prosecution charged

the prisoner with murder in the first degree, but he argued that the evidence in this case did not sustain the charge. The prisoner's conduct in the engine-house showed no malice, according to the testimony of Col. Washington and Mr. Allstadt.

However ridiculous his project, which it would seem could never have entered the mind of a sane man, he might still have believed he could carry out that project without bloodshed. At any rate, no sane man could suppose he expected, with a mere handful of men, to accomplish his object by force, and it is but fair to take his declarations, especially when compared with his acts, that he intended to shed no blood, except in self-defence, unless you should believe, beyond the slightest doubt, that those declarations were untrue, and that the prisoner was actuated by malice in taking the lives of those who never did him harm, and against whom no cause for malice existed. As to Hayward, there was no proof as to how he met his death, or who killed him, or for what cause; and as his colleague had remarked, the prisoner had no motive to kill negroes. The subsequent contest resulted in the loss of life, but the prisoner endeavored to avoid that conflict for the purpose of saving life, and therefore could not have been actuated by malice, which is necessary to constitute murder in the first degree.

Even if the prisoner were guilty of murder in the second degree, or manslaughter, yet neither was a capital crime, and not the crime charged in the indictment. He did not know but that Brown was justified in returning the fire when fired upon under the circumstances. It was a sort of self-defence, and very probably, had a little more time been allowed, those men could have been taken into custody without loss of life. He charged the jury to look on this case, as far as the law would allow, with an eye favorable to the prisoner; and when their verdict should be returned, he trusted that every man in the community would acquiesce in it. Unless the majesty of the law were supported, dissolution of the Union must soon ensue, with all the evils which must necessarily follow in its train.

Mr. Hunter closed the argument for the prosecution. He said he proposed to argue this case precisely like any other. He had hoped the counsel for the defence would have omitted to interpolate any outside matters, and, to a great extent, he

had been gratified. One remark he would allude to in the opening speech of the defence this morning, where he had been represented as having drawn the picture of the dishevelled locks of an alarmed beauty. His friend had done him some injustice, in attributing to him a design of exciting alarm, or disturbing the minds of the people unnecessarily. He had endeavored to march straight forward, with the sole purpose of discharging his duty, in procuring the attainment of justice in respect to the prisoners. He would commend to Mr. Griswold the testimony he had borne at the opening of the Court, that not only have the forms of a fair trial been extended to the prisoner, but the substance also ; that, in the midst of all temptations to the contrary, in the midst of all the solid reasons that have been urged why a different course—I do not mean an irregular course—a different legal and constitutional course by the Governor of Virginia, might have been pursued by declaring martial law and administering drum-head justice. That the Chief Magistrate has taken high conservative ground, we, as Virginians, are justly proud of, and that we did not force this thing beyond what prudence requires of us, and that in regard to the power and patriotism of the Commonwealth of Virginia we are sufficient for it, come when it may, and in whatever form.

He proceeded to remove the objections founded on the idea that might have been made as to the power of this Court to try a case where the offence was committed. It was hardly necessary to show that it was within the county of Jefferson, and within the jurisdiction of this Court. There was a law in Virginia making the Potomac River the boundary between Maryland and Virginia, and giving either State power, by a solemn compact, to execute a criminal process to the further bank. These matters, which are contained in the Code of Virginia, it was unnecessary to prove by witnesses. The jury could read the Code for themselves. Another law defined the limits of Jefferson County, showing that it embraced the locality where these events occurred, and giving jurisdiction to this Court. It was hinted in a preliminary stage of the proceedings, and an attempt was made to argue, that the United States held an exclusive jurisdiction over the Armory grounds, but no stress was now laid on that point, because not one murder out of the four lives taken was committed on the Armory grounds. Mr.

Hunter then took up the argument of treason, which he understood to be that none but an *attaché* of the Commonwealth can commit treason against it. It is limited to no parties—it does not require that the offender should be a citizen according to our system of government, and the complicated machinery of Federal and State governments, under which we live. In some respects, we are unfortunately bound to recognize as citizens of Virginia those who have proven themselves within our borders, as in this case, and without them, as in others, our deadliest enemies. The Constitution of the United States provides that citizens of each State shall be entitled to all the immunities of citizens of the several States. Brown came here with the immunities given by the Constitution. He did not come divested of the responsibilities belonging to those immunities. Let the word treason mean breach of trust, and did he not betray that trust with which, as a citizen, he is invested when within our borders? By the Federal Constitution, he was a citizen when he was here, and did that bond of Union—which may ultimately prove a bad bond to us in the South—allow him to come into the bosom of the Commonwealth, with the deadly purpose of applying the torch to our buildings and shedding the blood of our citizens? Again, our Code defines who are citizens of Virginia, as all those white persons born in any other State of this Union who may become residents here. The evidence in this case shows, without a shadow of a question, that when this man came to Virginia and planted his feet on Harper's Ferry, he came there to reside and hold the place permanently. It is true that he occupied a farm four or five miles off, in Maryland, a short time since, but not for the legitimate purpose of establishing his domicile there. It was for the nefarious purpose of rallying forces into this Commonwealth, and establishing himself at Harper's Ferry as a starting point for a new Government. Whatever it was, whether tragical, or farcical and ridiculous, as his counsel has presented it, his conduct showed, if his declarations were insufficient, that it was not alone for the purpose of carrying off slaves that he came there. His Provisional Government was a real thing, and no debating society, as his counsel would have us believe, and in holding office under it, and exercising its functions, he was clearly guilty of treason. The 46th section has been referred to, as showing it was not treasonable, but he

supposed that that meant that the new government was to be a union of separate States like the present, with the difference that all were to be free States. The whole document must be taken together. The property of slaveholders was to be confiscated all over the South, and any man found in arms was to be shot down. Their conduct at Harper's Ferry looked like insanity, but there was too much method in Brown's madness. His purposes were too well matured, and he and his party declared there were thousands in the North ready to join them. While the jury are to take the whole declaration, the law books expressly declare they may reject, if they see good cause to do so, that which would extenuate the guilt of the prisoner. They are bound to consider it ; that is all. As to conspiracy with the slaves to rebel, the law says the prisoners are equally guilty, whether insurrection is made or not. Advice may be given by actions as well as words. When you put pikes in the hands of slaves, and have their masters captive, that is advice to slaves to rebel, and punishable with death. The law does not require positive evidence, but only enough to remove every reasonable doubt as to the guilt of the party. Sometimes circumstantial evidence is the strongest kind, for witnesses may perjure themselves or be mistaken. The defence say we don't know who killed the negro Hayward; that Brown did not do it because there was no object, but that it was dark, and the supposition is that Hayward was killed by mistake. They say Brown shot no unarmed men, but Beckham was killed when unarmed, and, therefore, he thought the whole case had been proved by the mass of argument. With regard to malice, the law was, that if the party perpetrating a felony, undesignedly takes life, it is a conclusive proof of malice. If Brown was only intending to steal negroes, and in doing so took life, it was murder with malice prepense. So the law expressly lays down, that killing committed in resisting officers attempting to quell a riot, or arrest the perpetrator of a criminal offence, is murder in the first degree. Then what need of all this delay—the proof that Brown treated all his prisoners with lenity, and did not want to shed blood? Brown was not a madman, to shed blood when he knew the penalty for so doing was his own life. In the opening he had sense enough to know better than that, but he wanted the citizens of Virginia calmly to hold arms and let him usurp the government, manumit our slaves,

confiscate the property of slaveholders, and without drawing a trigger or shedding blood, permit him to take possession of the Commonwealth and make it another Hayti. Such an idea is too abhorrent to pursue. So too, the idea that Brown shed blood only in self-defence was too absurd to require argument. He glories in coming here to violate our laws, and says, he had counted the cost, and knew what he was about, and was ready to abide the consequences. That proves malice. Thus, admitting everything charged, he knew his life was forfeited if he failed. Then, is not the case made out beyond all reasonable doubt, even beyond any unreasonable doubt indulged in by the wildest fanatic? We therefore ask his conviction, to vindicate the majesty of the law. While we have patiently borne delays, as well here as outside in the community, in preservation of the character of Virginia, that plumes itself on its moral character, as well as physical, and on its loyalty, and its devotion to truth and right, we ask you to discard everything else, and render your verdict as you are sworn to do. As the administrators of civil jurisdiction, we ask no more than it is your duty to do—no less. Justice is the centre upon which the Deity sits. There is another column which represents its mercy. You have nothing to do with that. It stands firmly on the column of justice. Administer it according to your law—acquit the prisoner if you can—but if justice requires you by your verdict to take his life, stand by that column uprightly, but strongly, and let retributive justice, if he is guilty, send him before that Maker who will settle the question forever and ever.

Mr. Hunter closed at 1½ o'clock.

During most of the argument to-day, Brown lay on his back, with his eyes closed.

Mr. Chilton asked the Court to instruct the jury, if they believed the prisoner was not a citizen of Virginia, but of another State, that they cannot convict on a count of treason.

The Court declined, saying the Constitution did not give rights and immunities alone, but also imposed responsibilities.

Mr. Chilton asked another instruction, to the effect that the jury must be satisfied that the place where the offence was committed was within the boundaries of Jefferson county, which the Court granted.

When Mr. Hunter closed his peroration to the jury, with

out further remark, at an intimation from the judge they immediately withdrew to consider their verdict. After an absence of three-quarters of an hour (during which the Court took a recess) they returned into court with a verdict. At this moment the crowd filled all the space from the couch inside the bar, around the prisoner, beyond the railing in the body of the court, out through the wide hall and beyond the doors. There stood the anxious but perfectly silent and attentive populace, stretching head and neck to witness the closing scene of Old Brown's trial. It was terrible to look upon such a crowd of human faces, moved and agitated with but one dreadful expectancy—to let the eyes rest for a moment upon the only calm and unruffled countenance there, and to think that he alone of all present was the doomed one, above whose head hung the sword of fate. But there he stood, a man of indomitable will and iron nerve, all collected and unmoved, even while the verdict that consigned him to an ignominious doom was pronounced upon him. After recapitulating his offences set forth in the indictment, the Clerk of the Court said:

Gentlemen of the jury, what say you, is the prisoner at the bar, John Brown, guilty or not guilty?

Foreman—Guilty.

Clerk—Guilty of treason, and conspiring and advising with slaves and others to rebel, and murder in the first degree?

Foreman—Yes.

Not the slightest sound was heard in the vast crowd as this verdict was thus returned and read. Not the slightest expression of elation or triumph was uttered from the hundreds present, who, a moment before, outside the court, joined in heaping threats and imprecations on his head; nor was this strange silence interrupted during the whole of the time occupied by the forms of the Court. Old Brown himself said not even a word, but, as on any previous day, turned to adjust his pallet, and then composedly stretched himself upon it.

Mr. Chilton moved an arrest of judgment, both on account of errors in the indictment and errors in the verdict. The objection in regard to the indictment has already been stated. The prisoner has been tried for an offence not appearing on the record of the Grand Jury—the verdict was not on each



count separately, but was a general verdict on the whole indictment.

Counsel on both sides being too much exhausted to go on, the motion was ordered to stand over until the next day, and Brown was again removed unsentenced to prison.

A jury to try Coppie, who was now brought into court, was subsequently sworn.

The Court, in consideration of Stephens' wounds, allowed his case to stand over, but nothing further was done, and the Court adjourned.

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SIXTH DAY; SPEECH AND SENTENCE OF BROWN.

The Court gave his decision on the motion for an arrest of judgment, overruling the objections made. In the objection that treason cannot be committed against a State, he ruled that wherever allegiance is due, treason may be committed. Most of the States have passed laws against treason. The objections as to the form of the verdict rendered, the Court also regarded as insufficient.

The Clerk then asked Mr. Brown whether he had anything to say why sentence should not be pronounced upon him.

Mr. Brown immediately rose, and in a clear, distinct voice, said:

"I have, may it please the Court, a few words to say. In the first place, I deny everything but what I have all along admitted, of a design on my part to free slaves. I intended certainly to have made a clean thing of that matter, as I did last winter when I went into Missouri, and there took slaves without the snapping of a gun on either side, moving them through the country, and finally leaving them in Canada. I designed to have done the same thing again on a larger scale. That was all I intended to do. I never did intend murder or treason, or the destruction of property, or to excite or incite the slaves to rebellion, or to make insurrection. I have another objection, and that is that it is unjust that I should suffer such a penalty. Had I interfered in the manner which I admit, and which I admit has been fairly proved—for I admire the truthfulness and candor of the greater portion of the

witnesses who have testified in this case—had I so interfered in behalf of any of the rich, the powerful, the intelligent, the so-called great, or in behalf of any of their friends, either father, mother, brother, sister, wife, or children, or any of that class, and suffered and sacrificed what I have in this interference, it would have been all right, and every man in this court would have deemed it an act worthy of reward rather than punishment. This Court acknowledges, too, as I suppose, the validity of the law of God. I see a book kissed, which I suppose to be the Bible, or at least the New Testament, which teaches me that all things whatsoever I would that men should do to me, I should do even so to them. It teaches me further to remember them that are in bonds, as bound with them. I endeavored to act up to that instruction. I say I am yet too young to understand that God is any respecter of persons. I believe that to have interfered as I have done, as I have always freely admitted I have done in behalf of His despised poor, is no wrong, but right. Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I say let it be done.

“Let me say one word further. I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances, it has been more generous than I expected. But I feel no consciousness of guilt. I have stated from the first what was my intention, and what was not. I never had any design against the liberty of any person, nor any disposition to commit treason or excite slaves to rebel or make any general insurrection. I never encouraged any man to do so, but always discouraged any idea of that kind. Let me say also in regard to the statements made by some of those who were connected with me, I fear it has been stated by some of them that I have induced them to join me; but the contrary is true. I do not say this to injure them, but as regretting their weakness. Not one but joined of his own accord, and the greater part at their own expense. A number of them I never saw, and never had a word of conversation with till the day they came to me, and that was for the purpose I have stated. Now, I am done.”

While Mr. Brown was speaking, perfect quiet prevailed, and when he had finished the Judge proceeded to pronounce sentence upon him. After a few primary remarks, he said that no reasonable doubt could exist of the guilt of the prisoner, and sentenced him to be hung in public, on Friday, the 2d of December next.

Mr. Brown received his sentence with composure.

The only demonstration made was by the clapping of the hands of one man in the crowd, who is not a resident of Jefferson county. This was promptly suppressed, and much regret is expressed by the citizens at its occurrence.

The Court then adjourned.

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#### THE EXECUTION.

At eleven o'clock on Friday, Dec. 2d, John Brown was brought out of the jail, accompanied by Sheriff Campbell and assistants, and Capt. Avis, the jailer.

Sheriff Campbell bid the prisoner farewell in his cell, the latter returning thanks for the sheriff's kindness, and speaking of Capt. Pate as a brave man.

The prisoner was then taken to the cell of Copland and Green; he told them to stand up like men and not betray their friends; he then handed them a quarter each, saying he had no more use for money, and bid them adieu. He then visited Cook and Coppie, who were chained together, and remarked to Cook. "You have made false statements." Cook asked, "What do you mean?" Brown answered, "Why, by stating that I sent you to Harper's Ferry." Cook replied, "Did you not tell me in Pittsburg to come to Harper's Ferry and see if Forbes had made any disclosures?" Brown: "No, sir; you know I protested against your coming." Cook replied, "Capt. Brown, we remember differently," at the same time dropping his head.

Brown then turned to Coppie, and said, "Coppie, you also made false statements, but I am glad to hear you have contradicted them. Stand up like a man." He also handed him a quarter. He shook both by the hand, and they parted.

The prisoner was then taken to Stephens' cell, and they

kindly interchanged greetings. Stephens said, "Good-bye, Captain, I know you are going to a better land." Brown replied, "I know I am." Brown told him to bear up and not betray his friends, giving him a quarter.

The prisoner then told the sheriff he was ready; his arms were pinioned, and with a black slouch hat on, and the same clothes he wore during the trial, he proceeded to the door, apparently calm and cheerful.

He did not visit Hazlitt, as he has always persisted in denying any knowledge of him. On his way to the scaffold Mr. Saddler, an undertaker, who was in the wagon with him, remarked, "Capt. Brown, you are a game man." He answered, "Yes, I was so trained up; it was one of the lessons of my mother—but it is hard to part from friends, though newly made." He then remarked, "This is a beautiful country; I never had the pleasure of seeing it before."

As he came out the six companies of infantry and one troop of horse, with General Taliaferro and his entire staff, were deploying in front of the jail, whilst an open wagon with a pine box, in which was a fine oak coffin, was waiting for him.

Brown looked around, and spoke to several persons he recognized, and, walking down the steps, took a seat on the coffin box along with the jailer, Avis. He looked with interest on the fine military display, but made no remarks. The wagon moved off, flanked by two files of riflemen in close order. On reaching the field, the military had already full possession. Pickets were established; and the citizens kept back, at the point of the bayonet, from taking any position but that assigned them.

Brown was accompanied by no ministers, he desiring no religious services either in the jail or on the scaffold.

On reaching the field where the gallows was erected, the prisoner said, "Why are none but military allowed in the inclosure? I am sorry citizens have been kept out." On reaching the gallows he observed Mr. Hunter and Mayor Green standing near, to whom he said, "Gentlemen, good-bye," his voice not faltering.

The prisoner walked up the steps firmly, and was the first man on the gallows. Avis and Sheriff Campbell stood by his side, and after shaking hands, and bidding an affectionate adieu, he thanked them for their kindness. When the cap was put

over his face, and the rope around his neck, Avis asked him to step forward on the trap. He replied, "You must lead me, I cannot see." The rope was adjusted, and the military order given, "Not ready yet." The soldiers marched, and counter-marched, and took position as if an enemy were in sight, and were thus occupied for nearly ten minutes, the prisoner standing all the time. Avis inquired if he was not tired. Brown said "No, not tired; but don't keep me waiting longer than is necessary."

While on the scaffold, Sheriff Campbell asked him if he would take a handkerchief in his hand to drop as a signal when he was ready. He replied, "No, I do not want it—but do not detain me any longer than is absolutely necessary."

He was swung off at fifteen minutes past eleven. A slight grasping of the hands and twitching of the muscles were seen, and then all was quiet.

The body was several times examined, and the pulse did not cease until thirty-five minutes had passed. The body was then cut down, placed in a coffin and conveyed under military escort to the depot, where it was put in a car to be carried to the ferry by a special train at four o'clock.

All the arrangements were carried out with precision and military strictness.

The body of Brown arrived by the special train, and was taken on by Mrs. Brown and friends, by express direct to Albany.

Mrs. Brown spoke in the highest terms of the great kindness shown her by the citizens and authorities of the State. She was, of course, in great distress. She most favorably impressed all who met her, as a woman of fine feeling and of great affection for her husband.

Brown executed an instrument empowering Sheriff Campbell to administer on all property of his in the State, with directions to pay over the proceeds of the sale of the weapons, if recovered, to his widow and children.

A MOORISH EXECUTION.

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The American Consul at Tangier, G. V. Brown, Esq., furnishes the following second-hand description of an execution which took place without the walls of Tangier some years since. Capital punishment, he says, is rare in that country, only three instances having occurred in fifteen years, and the Moors are not allowed to witness them. The victims on this occasion were two young men, accused of having been engaged in contraband trade in oxen with Spanish infidels. One was a tall, handsome young man, who had been engaged by a Frank as a gardener. At the spot where the execution took place grew a bunch of beautiful white lilies.

"Here, where we now stand, was then a Jewish slaughter ground, and this (touching with the muzzle of his gun the group of lilies to which I have referred) had been selected as the spot for the execution. Here was found a depraved-looking Moor, dressed as a butcher, holding in his hand a small knife about half a foot in length. He was a stranger, and had been hired to act on the occasion; for the Mohammedan butchers of Tangier, who are the persons constrained to perform such service when a regular executioner cannot be found, had taken refuge in the sanctuary of Mesmoody; and had it not been for this person offering his services, the authorities would have been much perplexed to obey the mandate of the Sultan.

"A morbid curiosity chained me to the spot, although I foresaw I should have to witness a scene of horror. Some wrangling now ensued between the Kaid's soldiers and the executioner as to the reward the latter was to receive for decapitating the poor wretches, who, all the time, were standing by, compelled to listen to this bartering for their blood. The

butcher insisted that four dollars had been offered him for one head alone, and contended for a like amount for the other. The Kaid unwillingly yielded the point, and immediately the first victim, who was already half dead with terror, was thrown down on the ground by the executioner, who kneeling on his breast, put the knife to his throat. I turned away—a violent struggle ensued, and I heard the executioner say, ‘Give me another knife—mine won’t cut.’ I looked around; the wretched man was laying with his throat half cut, his breast heaving, and every limb writhing. My companion now loudly reproached the party for their cold-blooded atrocity, and called upon them to put the suffering man out of his misery. After a time another knife was handed by a soldier to the executioner, and the head was severed. The soldiers shouted feebly, ‘May God prolong the life of our Sultan!’ though I observed that many of them were as much horrified as ourselves.

“I remained riveted to the spot, where yet another victim awaited his fate. This was the fine-looking fellow of whom I have spoken. Again there took place a bartering for his blood; the Kaid denying his late promise, and declaring that he would not give even the four dollars already earned, unless the head of the second criminal was cut off. To this the executioner was at length forced to consent. The culprit now begged to be untied. This request being acceded to, he took off his galea, and giving it to the soldier who had performed this act of kindness to him, said—‘Accept this; we shall meet in another world.’ His turban he threw to another who had uttered a word of pity instead of joining in the insulting shout of the soldiery; and walking steadily to the spot where his companion lay, cried out with a distinct voice—‘There is no God but one, and Mohammed is his prophet.’ Then turning to the executioner, he loosened his girdle, and gave it to him, saying, ‘For the love of God, sever my head with better dispatch than you did that of my brother.’ He laid himself flat on the ground, yet moist with blood; and the knee of the ruffian, for so he deserved to be called, was placed on the Reefian’s breast. A horseman was now seen galloping towards the party.

“‘A reprieve!’ shouted my friend. ‘Stop! stop!’ The executioner withheld his knife.

“ ‘It is only the son of the governor,’ exclaimed a soldier; ‘he’s coming to see the execution. Wait for him.’ ”

“ I rushed away in horror; and soon afterward saw the soldiers bearing in their hands the two bleeding heads.

“ As we felt no desire to continue our walk, we waited with the soldiers until the gates were opened. A fresh dispute took place between them and the executioner, who demanded protection from the populace, which the soldiers refused to give, unless he gave them two dollars, the half of his earnings. This the butcher refused to do, and he was left to his fate.

“ No sooner were the gates opened than a troop of boys rushed out and attacked the executioner with stones. The man fled into the country, pursued by the young mob—and it was reported he had fallen senseless some three miles from the town covered with a hundred bruises.

“ On entering the town the soldiers seized the first Jew they met, and obliged him to salt the heads, which were subsequently hung from the top of a square tower on the town wall, fronting the great market place.

“ As I returned homeward I met in the little rok a Reefian, whom I knew to be a cousin of the deceased gardener, armed with a brace of pistols and a dagger, hurrying along. On asking him what was the matter, he replied, ‘ I am about to revenge the death of my relation on that accursed stranger, who alone was found ready to cause our blood to flow.’ ”

“ Next day it was reported the executioner had been shot and buried on the spot. No investigation was had by the authorities of Tangier; and the cousin returned and remained unmolested.

“ After three days’ exposure, the heads were sent to the Sultan, to convince his imperial majesty that his orders had been obeyed. They were met on the road by a courier bringing a reprieve, who was said to have been detained in consequence of one of the rivers being impassable from heavy rains.”

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## THE WALWORTH PARRICIDE.

A FULL ACCOUNT OF THE ASTOUNDING MURDER OF MANSFIELD T. WALWORTH, BY HIS SON, FRANK H. WALWORTH, WITH THE TRIAL AND CONVICTION OF THE PARRICIDE, AND HIS SENTENCE FOR LIFE TO THE STATE PENITENTIARY AT SING SING.

On the morning of Tuesday, the third day of June, 1873, the people of New York were startled by the news of one of the most remarkable murders ever perpetrated in that city. Though long accustomed to see, in the papers of almost every morning, the details of some new and unheard-of crime, such tragedies as that which marked the morning of the third of June have been so very rare that it gave rise to a general feeling of amazement, and caused an expression of horror to escape from the lips of almost every resident or sojourner in the city. In many years there has not been, in the United States at least, any very remarkable instance of a murder of a father by his son or daughter. There have been in the city of New York, within the past seven or eight years, some three or four cases of matricide, a score of uxoricides, several fratricides, and hundreds of homicides, but not one parricide—at least none that has been determined to be such.

Since the day of the Fisk murder indeed no such excitement has been seen in the city of New York over any single event. The eminence of the family, the reputation of the murdered man as an author, and the peculiarly horrifying circumstances of a son killing his own father, gave the affair an appearance of sensationalism which was justified by the facts. It was a true sensation, not simply washed, and the startling circumstances no pen could overdraw. Those who read felt that the people of New York were to be edified by another *cause cele-*

bre, in which the facts were more repletely terrible than any for many years. From mouth to mouth the story passed, and was soon known all over the city. At the various hotels, in the many lobbies, little else was spoken of, and it engaged the deepest attention. In front of the Sturtevant House, inquisitive crowds would occasionally collect and gaze into the empty hallway with that singularly idiotic stare which crowds possess.

Of all the crimes that shock the souls of men none has ever been held in greater abhorrence than parricide. To conceive that the offspring should become the slayer of the parent is fearful under any circumstances; but when the offence is committed with intent and knowledge, its enormity is intensified a thousand-fold. It was a crime punished by the ancients with awful rigor and held in the deepest detestation; and, according to mythological record, the culprits were delivered up to the torments of the Furies. *Œdipus* slew his father *Laius* as they chanced to meet in the way, while the son was journeying to *Phocis*, and the avenging Fates followed him thereafter with misfortune, disgrace, remorse, and cruel tortures to his death. *Orestes*, too, the son of *Agamemnon* and *Clytemnestra*, slew his mother to avenge the death of his father at her hands, and to blot out her adulterous shame, and he likewise was tormented by the Furies, though afterward purified by the people of *Argos*.

In all ages the offence, considered in proportion to the aggregates of murders, has been comparatively rare, and in the majority of these instances the deed has usually been the result of anger, accident or mental aberration.

The circumstances of the murder of *Mansfield Tracy Walworth* by his son, *Frank H. Walworth*, renders this tragedy one of the most remarkable of the present or any past period of our history. At about 3 o'clock, on Monday afternoon of June 2d, a tall and slim young man, with frank and winning large blue eyes, a smooth face, fair complexion, light whiskers and refined features, and dressed in a light tweed suit, and a spring overcoat, applied to *Mr. Barrett*, the clerk at the *Sturtevant House*, for a room. He registered his name *Frank H. Walworth*, and was allotted to room No. 267 on the second floor. Afterwards he went to the house where his father was boarding, in *Fourth avenue*, near *Fifty-fourth street*. His

father was not at home, the servant girl informed him, whereupon he left with her the following note:

"3 o'clock.

"I want to try and settle some family matters. Call at the Sturtevant House after an hour or two. If I am not there I will leave word at the office.

F. H. WALWORTH."

The servant girl promised to give the note to his father. He then left and went back to his hotel. Later in the evening he spoke with Mr. Barrett, who had had a previous acquaintance with him, and the two young men took supper together. During the meal Walworth appeared cheerful and unconstrained. The two gentlemen conversed on ordinary topics, and both ate heartily. Mr. Walworth retired to his room early.

At a quarter past six on Tuesday morning a tall, robust gentleman, middle aged, erect and fine looking, entered the Sturtevant House and asked that his card, on which was the name Mr. M. T. Walworth, might be sent to the room of Mr. Frank H. Walworth. The call boy took up the card, and after knocking twice was answered by Mr. Frank Walworth, who told him to ask the gentleman to wait, as he was not dressed. A few minutes after the call boy had descended with this message the bell of 267 rang. The call boy hastened upstairs, and on knocking at the door was told to enter. He did so, and saw Mr. Frank Walworth fully dressed, with his overcoat on, seated in a chair close by the window.

"Ask the gentleman to come up to my room," he said.

The hall boy departed, and on delivering his message, Mr. M. T. Walworth ascended the stairs, accompanied by the boy, to show him the way.

The boy says that he had barely time to get down-stairs and look around him when he heard the report of a pistol, followed by another report, and still another.

In a few moments Mr. Frank Walworth came running down-stairs, and going to the desk, said to the clerk:

"I've just shot and killed my father up-stairs in my room."

The clerk was first bewildered and then horror stricken.

"Get a policeman as soon as you can," said Walworth. "I wish to give myself up."

He then through the telegraph office at the hotel, at once

sent a dispatch to his uncle, C. Walworth, at Albany: "I have shot father; look after mother."

He then went to the Thirtieth-street police station, and advancing to the desk where Sergeant Keating was in charge, said:

"Officer, I've just shot and killed my father at the Sturtevant House."

"I'm sorry to hear it," said the sergeant, thinking at first that the self-accuser might be insane.

The sergeant called an officer and told him to take charge of the young man. Another officer was sent to the Sturtevant House to ascertain the truth of the story, and on his return with the dreadful confirmation, the facts were formally entered on the record. The young man delivered to the sergeant a small Colt's five-shooter, with four of the barrels discharged.

"That," said he, "is the pistol I shot him with."

At half-past ten Coroner Young and Dr. Marsh arrived, and Walworth gave the following statement in reply to the Coroner's queries:—

"I reside with my mother in Saratoga, my father having parted from her some years ago. My father is an author, and I have been studying law. I think my father is about forty-one years old, but do not know where he was born. My father has not lived with my mother since we left here three years ago, but he has repeatedly sent us threatening and insulting letters. It is only a short time ago since he threatened to shoot my mother and myself. I shot him because of this. Not long ago I met him in the street in Saratoga, and I then told him that if he did not keep away from us, or insulted my mother any more, I would shoot him. I also told him that there were bounds which I would not allow any man to go beyond with impunity, especially when my mother was being insulted. I went to his house yesterday and left a note for him to call on me, which he did this morning. When he came into the room I drew out a revolver and told him to promise me that he would not threaten or insult us any more, which he promised. Shortly after we began speaking on family matters, and he used some very insulting language and put his hand in his pocket as though to draw out a pistol, when I shot him. He then came towards me

and I fired three other shots at him. When I fired the last shot he had me by the collar. I only regret this on account of the effect it will have on my family. I would like Judge Barbour to know this, as he was interested in the case before."

When he had answered the Coroner's questions, Walworth sent the following dispatch to Chicago:

"M. D. HARDIN, 162 La Salle street, Chicago:—I shot father this morning. F. H. WALWORTH."

A reporter of the New York *Sun* obtained an interview with young Walworth, and gives the following as the conversation which occurred:

*Reporter*—What led you to this dreadful crime?

*Walworth*—Family troubles. It's been going on for some time, and the story is a long one.

*Reporter*—When did you come to the city?

*Walworth*—I left Saratoga yesterday, and arrived here at a quarter of three in the afternoon.

*Reporter*—Excuse my asking the question (here the prisoner looked hard at the reporter and smiled. His smile is very sweet), but did you come here with the intention—why did you come here?

*Walworth*—I came here to do what I have done.

*Reporter*—When you arrived here, what did you do first?

*Walworth*—I went straight to my father's boarding-house on Fourth avenue, near Fifty-second street.

*Reporter*—You did not find your father in?

*Walworth*—No; but I had prepared a note which I left for him.

*Reporter*—When your father entered your room this morning, what passed between you?

*Walworth*—I took out my pistol and pointed it at him. I said, "I want you to promise that you will not threaten to shoot me or my mother any more."

*Reporter*—What did he answer?

*Walworth*—He said, "I will promise not to do so."

*Reporter*—What did you do then?

*Walworth*—I said, "Will you promise that you won't insult me or my mother any more? In the past you have done it with impunity, but you cannot do it any more."

*Reporter*—And what was the reply?

*Walworth*—He said, "I won't trouble you any more." Then I said, "You have broken your promises many times before. I am determined you shall keep them this time." Then I shot him.

*Reporter*—Did he offer to defend himself?

*Walworth*—The last shot I fired he was close up to me.

The venerable Judge Barbour was holding a court in the Superior Court, No. 2, when one of the counsel stepped up to him and informed him of the killing of Mansfield Tracy Walworth by his son. Judge Barbour immediately gave way to an emotion he could not control. He leaned his head on the desk for a few moments, and then said:

"Gentlemen, we will adjourn the Court for to-day."

He then tottered down the steps, so that he had to be helped out of the court room. He immediately took a coach, and, going in search of ex-District Attorney Garvin, went in his company to the Sturtevant House, where he asked for the "boy." When told that he was a prisoner at the Twenty-ninth precinct station-house, he asked where it was, and immediately repaired there. He entered the police station at one o'clock, accompanied by ex-District Attorney Garvin.

After a few words with Captain Burden, they were admitted to the prisoner's cell. Judge Barbour merely looked at the prisoner and immediately quitted the cell without speaking. He walked up and down the station while Mr. Garvin was conversing with the prisoner. Mr. Garvin was occupied with the prisoner nearly half an hour.

Mr. William A. Beach, while in court in the morning, also received a telegram from Saratoga asking him to take the case of Frank H. Walworth in charge, and await the arrival of his mother, Mrs. Ellen Hardin Walworth, who was expected to arrive in New York in the evening.

Soon after the interview with Mr. Garvin, Frank Walworth was removed to the Tombs. Officer Malony, who went with him, asked him several questions in regard to the murder, but he refused to say anything. He smoked his cigar and spoke about the squares and streets which they passed, and his having forgotten most of their names.

"I have seen a great many murderers," the officer told a

*Herald* reporter, "but I never saw one so cool. He was just as much excited as you are now."

Walworth reached the prison between half-past two and three o'clock. He was attired in a suit of light-colored spring clothing, and had also a spring overcoat of a light color and texture. He had none of the appearances of a prisoner.

"You might say he came down here himself," said a keeper. "He walked in free and quiet in manner. There was no excitement about him, and I tell you it's a rare thing to see a man come in here as easy and offhanded as he did."

The prisoner was duly registered by the clerk at the desk, and in a minute afterward passed through the grated doors which were to shut him out from the world. He passed with a quick, thoughtless pace through the prison yard, walked into the main prison building, and the clanking iron door that leads up to the first iron gallery in the corridor was opened for him. In two minutes more the door of cell No. 67 was opened to him, and he stepped inside without any hesitation, being obliged to stoop as he entered in consequence of the lowness of the doorway. This cell is on the north corner of the corridor, on the rear or Elm street side, and was furnished simply with a cot and stool, the bed being provided with the ordinary prison clothing. The door was then closed on him.

After an interval of about an hour Walworth was removed to cell No. 44, in the southern wing of the corridor, but on the same tier. This brought him into the neighborhood of the notables who occupy "Murderers' Row," and his fellow residents on the same block of habitations were Sharkey, Scannel, King, and some other subjects of sanguinary fame. In this cell also the furniture was of the same plain description.

When left alone Walworth took off his light overcoat and sat down on the miserable bed, alone with his thoughts. Up to six o'clock he sat on the bed, thinking deeply, but in no wise depressed in spirits. He made no requests to the prison officials for food or extra paraphernalia, two candles being the only things furnished him.

Shortly before six o'clock a reporter wrote a series of eight questions to the prisoner, which were conveyed to him by one of the keepers, with a request that, if unobjectionable, he would make either written or verbal reply.

When the keeper presented the questions, together with the

reporter's personal card, Walworth was seated on the bed. Without rising he listened to the keeper's explanation of his visit, then took the paper, read the questions and the name on the card, and handed them back to the keeper, saying:

"Will you please tell him that I cannot answer any questions, as I am advised by my counsel not to hold any communication with any one."

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#### THE POST-MORTEM EXAMINATION.

At eleven o'clock on Wednesday morning, Coroner Young and his Deputy, Dr. E. T. T. Marsh, proceeded to empanel a jury at No. 60 Carmine street, and make a post-mortem examination in the case of Mr. Mansfield Tracy Walworth.

Coroner Young empanelled and swore the following named gentlemen to act as jurors in the inquest:—John V. Reynolds, foreman, attorney; Thomas C. Knox, physician; John B. Gilman, agent; F. C. Senior, undertaker; Jotham Clark, retired; Ferdinand A. Eibell, livery.

Deputy Coroner Marsh made a post-mortem examination on the body, assisted by Doctors Finnell, O'Hanlon, Knox, S. J. Clark and others, which lasted nearly two hours.

The following is a report of the autopsy made by Dr. Marsh and those associated with him:—

A pistol-shot wound of outside of the left arm, one-quarter of an inch in diameter, was found four inches below the acromion process; another of right side of face, one quarter of an inch in diameter, close to and on a line with the lower border of the ear; the skin around the wound, for a distance of two inches being blackened and filled with powder; and a similar wound in the left side of the chest, three and a half inches to the left of the median line of the body and six inches above the nipple, on a direct line, the edges of the wound being ragged and ecchymotic; also a pistol-shot wound of the right side of the chest; half an inch in diameter, situated one and a half inches to the right of the median line and two inches below the nipple. The direction of the latter wound was downwards, backwards and to the right; that of the face was on a straight line toward the left, a distance of four inches.



On opening the body the left side of the chest was found to be filled with fluid and clotted blood. The ball on this side of the chest entered between the second and third ribs, passed through the upper lobe of the left lung, and was found imbedded in the body of the second dorsal vertebræ. The ball which entered the right side of the chest struck and fractured the sixth rib, and then glancing it passed to a point four and three-quarter inches from the point of entrance, where it was found imbedded in the muscles of the chest. The ball which entered the right side of the face, in its course fractured the lower jaw at its angle, and also the upper jawbone, and lodged in the left side. The ball which entered the arm shattered the upper portion of the humerus and lodged in the biceps muscle.

All of the internal organs were examined and found to be healthy. Death was due to shock and internal hemorrhage from pistol-shot wounds received—the internal hemorrhage resulting from the wound of the left side of the chest. All the bullets found in the body were round ones. Had deceased lived it would have been absolutely necessary to amputate the left arm at the shoulder joint. The wound necessarily fatal was that in the left breast. Deceased possibly might have recovered from the wound of the face, as the brain was uninjured by the ball; the bullet in the face was not removed, as it would have necessitated great disfigurement. There was great trouble experienced by the physicians in tracing the fatal bullet on the left side of the chest.

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#### THE CORONER'S INQUEST.

The inquest concerning the death of Mansfield Tracy Walworth, was held on Friday, June 6th, in the Thirtieth street Police Station. Half past ten was the time fixed, but the inquest was not begun until twelve o'clock. Coroner Young, Deputy Coroner Marsh, District Attorney Phelps and the jury were punctual, but the prisoner was absent. Two officers had been dispatched to bring him up, but there was no appearance of them either. Eleven o'clock came and half-past eleven, and still there was no appearance of young Walworth, and the

crowd of people who were awaiting his arrival were scattered through the station house and on the street, eagerly looking for him. The delay seemed so strange and unaccountable that many persons thought that something serious had occurred, and to allay their anxiety, Coroner Young telegraphed to the Sixth precinct station house to ascertain the cause of the delay. An answer came, saying that the prisoner had left the Tombs in charge of two sergeants, and was on his way up. Precisely at twelve o'clock there was a rush made towards the room where the inquest was to be held, and it was announced that young Walworth was coming. In a minute after a coach drove up, and from it there then alighted the prisoner, in charge of Sergeants Mullins and Keating, Mr. Charles O'Connor and ex-District Attorney Garvin. Every eye was fixed upon the youth as he approached, but he appeared cool and unconcerned. He walked into the station house with a careless, jaunty walk, and took a seat at the table beside the coroner. He was only nineteen years of age, but looked somewhat older.

The jurors answered to their names as follows: John B. Gilman, agent; Thos. C. Knox, physician; John V. Reynolds, attorney; Frank C. Senior, undertaker; Jotham Clark, retired; and Ferdinand A. Eibell, livery stable keeper. The Coroner reminded them of their oath in a few words, and then at once proceeded with the investigation.

It is seldom that such an array of talent can be seen at a Coroner's inquest as gathered at this one. District Attorney Phelps represented the State alone; but for the prisoner there appeared Charles O'Connor, who occupied a seat beside his unhappy client, Mr. Garvin and Mr. Miles A. Beach.

The morning was beautiful and bright before the inquest opened, but the inquiry into the dark tragedy had not proceeded far when the sky suddenly became overcast, and vivid flashes of lightning penetrated into the room, accompanied by terrific thunder-claps. The rain poured down in torrents, and the room became so dark that gas had finally to be lighted. It was felt by many that there was something portentous in the angry elements, and they were certainly in consonance with the fearful tale of parricide which was given to the jury by the witnesses.

All through the investigation the prisoner remained sitting

in the same position, sometimes drumming upon the table with his fingers, and occasionally whispering to Mr. O'Connor, who was eagerly watching the case as it proceeded. He paid marked attention to whatever Mr. O'Connor said, and eagerly complied with his slightest wish.

While one of the witnesses, Mr. Morehead, was detailing to the jury what he had heard on the morning of the murder, he, by direction of Coroner Young, intimated in a rather dramatic manner, by claps of his hands, the intervals which took place between the shots, the prisoner seemed to be slightly agitated, but the feeling was only momentary and soon passed away.

One of the witnesses, Mr. Barrett, the cashier of the Sturtevant House, when he appeared to testify, shook the prisoner by the hand, and seemed very much affected.

There was very little interference from counsel on either side, but Mr. O'Connor once or twice took exception to the reports of Dr. Marsh as they were read, and asked to have alterations made.

It was expected that the inquest would occupy only a couple of hours, but it did not conclude until nearly five o'clock.

After the witnesses had been examined the jury retired. They did not remain out over ten minutes. When they had returned and taken their seats the Coroner asked them the usual questions. The prisoner glanced carelessly at them and seemed perfectly unconcerned as to what their decision would be.

The foreman of the jury, Mr. Reynolds, in a slightly tremulous voice, read the following verdict:—

"We find that Mansfield T. Walworth came to his death from a shock and internal hemorrhage, the result of a pistol shot wound of the chest, said pistol having been discharged at the hands of Frank H. Walworth, at the Sturtevant House, New York, on Tuesday morning, June 3, 1873."

The coroner then, amid breathless silence, addressed the prisoner. He said to him :

"The first four questions I have to ask you are matters of form ; the fifth one I shall ask you you are at liberty to answer or not, as you please."

Walworth looked calmly at the Coroner and nodded his head.

*Coroner*—What is your name?

*Prisoner*—(in a firm, sweet, clear voice) Frank H. Walworth.

There was a flutter of excitement in the room as he was speaking, and every one eagerly pressed forward to hear what he would say.

*Coroner*—What is your age?

*Prisoner*—Nineteen.

*Coroner*—Where were you born and where do you reside?

*Prisoner*—I was born in Saratoga, and resided there.

*Coroner*—What is your occupation?

*Prisoner*—I have none at present.

*Coroner*—The question I now ask you you can answer or not as you please. What do you know of this case?

The prisoner consulted a moment with Mr. O'Connor and then said in a calm voice :

“I am guilty of no crime. I wish to make a statement.”

He then pulled a paper from his pocket and read his statement in a firm tone, pausing to allow the reporters and Dr. Marsh time to write it down. His coolness was extraordinary. The following is the statement :—

“My father treated my mother very cruelly for years, incensed against his own father for putting his little share of the property in trust, so that my mother and the family got something out of it. My father kept writing letters to my mother full of imprecations against his father. He wrote to her, among other things:—‘I will kill your boys and defeat the damned scoundrel in his grave and cut off his damned name forever.’ He also threatened my mother’s life, and spoke of shots being suddenly heard, from his resentment. About three years ago he beat my mother cruelly. I was not present, but I saw the marks. When I heard this I loaded a pistol belonging to a cousin of mine, and have carried it. I supposed my father was armed, at least when he intended to see us. My uncle, Clarence Walworth, has been as a father to me. He recently proposed to take me to Europe with him. I was troubled about leaving my mother without a protector. On Sunday last I wrote thus to my uncle, and that I must go and see my father, and whether I would go to Europe or not would depend upon that interview. In fact, I wanted to get reliable assurances that he would not molest my mother dur-

ing my absence. I had no intention of killing him. When he came into my room I asked him to sit down; he did so. I spoke to him of his conduct, and said, 'Promise me that you will neither threaten my mother nor insult her or any of the family any further.' He answered me, 'I promise;' but with a look which to my mind implied contempt, and the reverse of an intent to keep the promise. He had just before put his hand up to his breast, as if to pull out a pistol. I am unconscious of having fired more than three times. He closed on me rapidly. His grasp was upon me when I fired the last time. I do not think he said anything during the whole interview except what I have stated."

When the prisoner had concluded the reading of this extraordinary statement he folded the paper up and put it in his pocket again. The reading produced a most painful impression in the crowded room, and there was quite a revulsion of feeling against the prisoner, who so coolly spoke of taking away a father's life on what seemed to be, from his own statement, such slender provocation.

When he had finished reading, the Coroner said :

"Frank H. Walworth, I will commit you to the Tombs to await the action of the Grand Jury."

Mr. O'Connor then said, "I suppose we are done to-day, Mr. Coroner;" and then the crowd filed out into the street. The prisoner, in company with his counsel, walked to the door, escorted by a policeman, and took a seat in the carriage, and was rapidly driven to the Tombs.

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#### THE INDICTMENT.

On Monday morning, June 9th, the Grand Jury of the Oyer and Terminer filed into their seats in their room in the County Court House at half-past ten o'clock. Shortly after meeting and while transacting some minor business, the District Attorney sent into the jury room the papers relative to the Walworth case. The Grand Jury immediately gave the case its exclusive attention and the witnesses were called. The examination did not take more than two hours in all, after which the sentiment of the Grand Jury was taken, and

it was found that the jurymen were unanimously in favor of an indictment for murder in the first degree. The bill was then ordered to be made out.

The following are the names of the members of the Grand Jury which ordered this bill: Charles Patrick (foreman), Sam. W. Millbank, Edgar Wright, Francis Endicott, Samuel Sproulla, William L. Vandervorst, Sylvester W. Comstock, William Clarkson, James T. Taylor, James A. Hearn, William J. Blair, Courtlant Schuyler, Frederick Ward, Theodore Martin, Edmund D. Saxton, Jesse Oakley, George Hurst, Jonathan L. Hyde, William S. Corwin, Henry M. Laher, Elisha Brooks, Edward S. Snelling.

On Wednesday morning, June 11, Judge Ingraham opened the court of Oyer and Terminer, acting as presiding judge in the temporary absence of Judge Davis, holding the current term of the court. The court room was crowded in anticipation of the arraignment of Walworth, and great anxiety was manifested to see the prisoner. By direction of the District Attorney, Walworth was early conveyed from the Tombs in a close carriage, and for some time previous to the opening of the court was detained in Sheriff Brennan's private office. When brought into court he took the seat to which he was motioned by the Sheriff's deputy with an air of the greatest unconcern. He conversed freely and with ease with his counsel, ex-Judge Garvin and W. A. Beach, and with any others who chose to address him. He seemed to listen anxiously to the song of the court crier as he formally opened the proceedings, and next directed his gaze intently at the District Attorney as he moved on the cause.

The District Attorney arose, and looking at the indictment, said he desired to have the prisoner plead.

*Clerk*—Prisoner, stand up. You are indicted for murder in the first degree, in having caused the death of Mansfield Tracy Walworth. Do you demand a trial? Are you guilty or not guilty?

*Prisoner*—Yes, sir (meaning he demanded a trial).

After some remarks by counsel, young Walworth, wearing the same air of imperturbability, was ushered from the room and reconveyed to the Tombs, followed by a curious crowd.

## THE TRIAL.

The trial of Frank H. Walworth commenced on Tuesday morning, June 24, 1873. The Court of Oyer and Terminer was filled with citizens, from whom were to be sifted twelve men to try the parricide. Among the friends of the prisoner were the Rev. Dr. Backus, of Schenectady, son-in-law of Chancellor Walworth; Lemuel Hardin, brother of Mrs. M. T. Walworth; and General James Lorimer Graham. Young Walworth was escorted in by Sheriff Brennan and Deputy Shields. His bearing was cool and haughty as ever.

Mr. O'Connor entered with solemn and dirge-like tread. He was accompanied by a tall, slender lady, draped in deep mourning. Beside her walked a pretty boy, with bright hazel eyes, and a fair, intelligent face. The lady was the prisoner's mother. Judge Barbour and Father Clarence Walworth were present during part of the day.

The entire day was consumed in securing a jury. The following gentlemen were selected :

1. Joseph H. Horton, 25 John street, jeweller.
2. Jacob A. Chamberlain, 519 West Thirty-third street, provisions.
3. James Wm. Tucker, 226 West Twenty-ninth street, machinist.
4. John P. Bell, 210 East 113th street, lumber.
5. Bernard Campbell, 203 East Forty-sixth street, retail butcher.
6. John Henry Lewis, 673 Greenwich street, gilder.
7. Elijah H. Purdy, 43 West Thirteenth street, sash maker.
8. Wm. H. Dougherty, 62 James street, foundry.
9. Wm. C. Smith, 61 Perry Street, builder.
10. Wm. Hart, 294 Monroe street, marble.
11. Charles E. Millbank, 13 East Twenty-fourth street, brewer.
12. George W. Wright, 16 University place, grocer.

After consultation with the District Attorney and counsel for the defence, Judge Davis said that the jury would be allowed to go home for the night to make arrangements for the future. The Court relied on their integrity that they would not allow themselves to be influenced by anything said

outside, and if any one should approach them with a view to influence their action in this case, they must report the person to the Court for punishment. He hoped that the press would refrain from comments during the trial.

Court opened at ten o'clock on Wednesday morning. There was an unusual rush for seats at the opening of the court, but, with the special instructions which had been given, perfect order and quiet was observed during the proceedings. The prisoner was brought in, in custody of the Sheriff's deputies, at half-past ten, at which time his counsel and the prosecuting officers were already in their places. Walworth was exceedingly self-collected, but had an anxious appearance. His mother, deeply veiled and clad in mourning, sat beside him during the day. His grandmother and several other ladies, also in mourning, were present and seemed deeply interested in the proceedings.

Mr. Rollins, Assistant District Attorney, presented the case for the prosecution, addressing the jury at considerable length, and minutely detailing all the circumstances of the shooting. He alluded to parricide as a "crime so revolting to nature that many nations had considered it impossible. The Persians had no penalty for parricide, for they did not believe that a Persian would commit such a crime. Among the Chinese the whole family of a parricide was exterminated, and his very dwelling place razed to the ground."

*Mrs. Eliza Simms* was the first witness called, and testified as follows :—I live on Fourth avenue, between Fifty-fourth and Fifty-fifth streets ; Mansfield Tracy Walworth roomed with me two years ; I saw the prisoner on the second of June, about three p. m., about the time the children got home ; he asked me if Mr. Walworth was in ; I went and looked and he was not in, and so I told him ; he said, "Tell Mr. Walworth to come to the Sturtevant House, his son wants to see him ;" I asked him if he was his son ; he said "Yes ;" I told him he had better write a note and I would give it to him ; he wrote a note and I put it on Mr. Walworth's table ; I never saw Mr. Walworth after I put the note on his table ; the prisoner had on a light overcoat and was cool and polite.

There was no cross-examination.

*Hooper C. Barrett*, clerk of the Sturtevant House, testified :—I had known the prisoner at Saratoga ; I saw him on the



second of June; I sent him up to No. 267; I talked with him about Saratoga affairs; no allusion was made to his father or his purpose in coming; about an hour later he came down and went out; when he came in he asked me to take dinner with him; I told him I would take supper with him; I saw him again about seven p. m.; I was at the counter; we took supper together at eight o'clock; his manner was his usual manner as I had known it at Saratoga; I next saw him at half-past six next morning; he came to the cashier's desk and said, "I have shot father;" I said, "You don't mean to say that;" he said, "Yes, I shot him four times; get a policeman;" I sent a boy out to get a policeman; he didn't find one, and I telegraphed for one to the district telegraph office; I had seen Mansfield Walworth that morning; he spoke to the night clerk and asked for Mr. Walworth's (prisoner's) room; the night clerk asked me and I told him the number of the room; he went up with a boy; I did not notice the bell of 267 being rung; I did not notice the bell of 268 rung violently; the prisoner came down not more than two or three minutes later; No. 268 was Mr. Ebert's room; the prisoner's manner was cool; he dictated a telegram to C. A. Walworth, Albany, stating, "I have shot father, look out for mother;" he spoke to me as a friend; that was the first intimation of the killing I had.

Cross-examined—To Mr. O'Connor—I was half an hour with him at supper; I did not see him take dinner; he asked me to take dinner with him when he first came in; I remember the ringing of the bell for room No. 268 and his coming down were very near together, but I can't say how near; he handed me \$7.10; he took it out of his pocket and handed it to me; I don't remember in what bills they were; he said, "There's money I think that will pay my bill; you take charge of it;" I don't know that he had any other money; I have known him about two years; I made his acquaintance when visiting Saratoga; I judge he reached the hotel about half-past three, because there is a train coming in about half an hour before that time, and it takes about half an hour to reach the hotel; I sent the telegram through the telegraph in the hotel; I don't know what they do with the messages; it was addressed to C. A. Walworth, Chapel Street, Albany.

*William H. Amos* (colored) testified—I am bellman at the Sturtevant House; I am on duty from a quarter of five in the

morning to midnight; about six o'clock of the third of June a gentleman came to the hotel; he spoke to the clerk, who called me and gave me a card; I carried it up to room No. 267 and rapped twice on the door; I said, "I have a card with Mr. Walworth's name on it;" just as I said it the door opened and I saw Mr. Walworth's face and hand; he said, "I am not up," or "I'm not dressed;" I went down and told them the gentleman would be down in a few minutes; I waited some time; the bell of No. 267 rang; then I went up and I knocked; Mr. Walworth said, "Come in;" I went in; he was sitting by the window and said, "Show the gentleman up;" I went down and showed Mr. Walworth up; the prisoner was still sitting by the window; I didn't see the prisoner rise; I saw Mr. Walworth step to the corner of the bedstead and I turned and went out; I saw the prisoner again in not less than five or more than ten minutes after; he was coming down-stairs, not very fast but lively; he went up to Mr. Barrett; I did not hear what was said by him; Mr. Barrett asked me to go for an officer; I went up and down the street a little way, but couldn't find any, so I came back; as I turned to go out some one said, "Quick as lightning;" I don't know who said it; Mr. Barrett and the prisoner were the only ones present; when I got back a messenger boy was there.

To Mr. O'Connor—I was engaged the Saturday evening previous, and went on duty Monday, June second; I noticed the prisoner on Monday; he looked as if he had been traveling, and his boots were dusty; he shook hands with Mr. Barrett; I don't remember particularly the time when I carried up the card the next morning; I can't say whether the prisoner was dressed or not; I only saw his face and hands; Mr. Walworth said nothing to me, but when he went in he turned round and gave me a look, as if he wanted me to leave the room; it was a kind of frown; he did not look as cross as you (Mr. O'Connor) do now (laughter): he looked as if he wanted me to leave the room; I suppose he shut the door.

*Josiah Morehead* testified—On the morning of June second I occupied room 266 at the Sturtevant House.

Q. Did you at any time on that morning hear the noise of a pistol shot? A. I did.

Q. What time was it? A. Very near half-past six.

Q. What happened—what did you hear and see? A. I

saw nothing; I heard a knock at a door; then I heard, "Here is," or "There is a card for you, sir;" then some little time after I heard a door either open or shut, and a very short time subsequently I heard a shot; then another after about the length of time a man would take to cock, aim, and fire a pistol; after the second shot I heard a cry of murder in a terrified voice; almost immediately I heard a third shot and a second cry of murder; then in quick succession a fourth shot; then I heard some person running, as I took it, through the entry; I did not leave my bed until after I heard the fourth shot; then I jumped out and dressed, and got out to the hall; I saw the housekeeper and Mr. Doolittle, the steward, I think, in the hall; I with them made search to ascertain the cause of the firing; we looked in the bath-room and one or two rooms, then I opened the room next to mine and looked in; I saw the body of a person lying partially upon the floor; this was from ten to fifteen minutes from the time I had left my room; I was not able to distinguish where the shots proceeded from; I thought it was up-stairs; I looked into the room, then I backed out, and said, "My God! here he is!" I said, "For God's sake send for Dr. Childs;" the body was lying upon the left side, the head a little elevated against the washstand.

Q. After hearing the door open and shut did you hear anything? A. Not a word; heard no noise or altercation and no movement; had heard people speaking in the adjacent room on previous occasions, but on that morning heard nothing at all.

*Charles M. Doolittle* testified—I rose at six A. M., and called some girls at twenty minutes past six A. M.; about five minutes after that I heard a shot; I was then on the landing of the floor on which No. 267 is; was on the main staircase; I think I heard more than one shot, but I didn't count them; all were fired within a minute, as quick as a man could cock a firearm and point it; when the shots were fired I heard a human voice; whether it was a cry of murder or a groan of pain I could not say; when I was opening the doors I heard the annunciator ringing; there was a very brief interval; I think Mr. Barrett was the first man who told me of the killing—in the presence of the prisoner; I then went directly to No. 267; I did not go in; I saw the body; I went for a doctor.

*Dr. Russell Childs* testified—I am a physician; I live at the

Sturtevant House; on the third of June I was summoned to room 267; it must have been near seven; nearer than half-past six; I found a body lying on the left side with its head against the washstand; I felt the pulse; it was barely perceptible; the respiration was very feeble; the wash-basin had water in it; blood had spurted into the water already there; under the bed was quite a pool of blood; in a very brief space of time pulse and respiration ceased; as he was evidently at the point of death I did not move him; from the wound in the temple there was a slight oozing; afterwards I examined the body, but not very thoroughly, as I knew there was to be a Coroner's jury; several assisted me in placing the body on the bed; a portion of the clothing was removed, and a slight examination of his pockets made; we found a card; I had been long acquainted with Chancellor Walworth, and my interest in the family induced me to go and see the grandson; he gave me a telegraphic dispatch to his grandmother in Chicago; I showed it to the sergeant; I believe he handed it back to me; I took it to Mr. Barrett at the hotel.

*Stephen Keating*, sergeant of the Twenty-ninth Precinct, testified—I saw the prisoner at a quarter to seven, A. M.; he said he had shot his father, and wished to give himself up; he drew a pistol from his pocket and said, "This is the pistol I shot him with;" it had one undischarged cartridge; I asked him if his father was dead; he said he must be, the last time he shot him he was very near him; I asked him why he did it; he said he had not lived with his mother for a long time, and had threatened to kill his mother and her children; I asked him when he last saw his father; he said not since last fall; I asked him whether he had any disturbance with his father that morning; he said no; he showed me his left hand; the back of it was scratched or raised, and he said it was burnt with the powder; we took away from him a pocket knife; he said, "Do you think I would commit suicide? You are mistaken."

*Sergeant Washington Mullen* testified—I went to the Sturtevant House with Dr. Mulford and searched the pockets of the deceased; I found a note and some keys; I was present at the Coroner's examination; he stated as follows :

Mr. O'Connor here interrupted, claiming that to admit in evidence the examination before the Coroner, in view of the fact

that the statement was made while the prisoner was in custody, and without the usual and proper warning, and merely preserved orally, was a most dangerous innovation.

The Court held that at present it appeared only as a voluntary statement.

Mr. Beach examined the witness, who stated:

This was in the station-house. I introduced the Coroner as the Coroner. He had no writing materials that I know of. When he said he had been studying law the Coroner said, "Well then I suppose you know what is right." That is all I remember of a preliminary nature.

Mr. O'Connor said that this was exactly the exception which the law refused to hear.

The Court held that the mere introduction of the Coroner as the Coroner gave the conversation no official character, and admitted the evidence. (Exception).

Witness resumed:

The Coroner asked him why he came to New York; he answered, "To do this;" the Coroner said, "To kill your father?" he answered, "Well, to settle this family difficulty."

*Coroner Nelson W. Young* was called and testified to the holding of the inquest and the statement there made by the prisoner.

The result of the post mortem examination was then given in evidence, after which the prosecution rested.

Mr. Beach at 3:30 P. M. opened the case for the prisoner, and occupied an hour and a half in his address to the Jury. During the entire day the prisoner had remained calm and collected, but as Mr. Beach proceeded in a pathetic manner to describe the wrongs Mansfield T. Walworth, whom he pronounced a demoniac fiend, had inflicted upon his wife and children, the prisoner's feelings gave way, and dropping his head in his hands he seemed deeply affected. At the conclusion of Mr. Beach's address the court adjourned, the jury being allowed to separate.

The Court opened on Thursday and was soon filled to a jam with spectators. There was quite a number of ladies present. Many of them were old stagers in the murder trial line of spectators, two of them having attended, it is said, every murder case held in this city during the past ten years. Immediately behind the counsel there were several lady friends

of the Walworth family, some of whom had been subpoenaed to attend, and others of them having come merely to give testimony by their presence to their friendship for the prisoner and his mother.

*Augustus Ebert* was the first witness examined for the defence, and testified that on the morning of June 3, he had occupied room 268 in the Sturtevant House, which immediately adjoined that in which young Walworth was; he heard some loud talking, but was not fully awake until after the first shot; he could not distinguish any of the words made use of, and heard no cry of murder; on hearing the shot he had jumped out of bed and pulled the bell violently.

To the District Attorney—I was very much excited at the time; the only words I could distinguish were “hope,” “mother,” “liar,” but could not make out any connected sentence.

*Clarence T. Jenkins* testified that he was a nephew of the deceased; lived in Albany; took charge of the effects of M. T. Walworth.

*Rev. Jonathan T. Backus*, brother-in-law of deceased; *Mrs. Ann Eliza Backus*, sister of deceased; *John M. Davidson*, brother-in-law of deceased; Chief Justice *John M. Barbour*, *Joseph W. Hill*, a lawyer of Saratoga in whose office the prisoner was studying law; *John R. Putnam*, a lawyer of Saratoga; *Wm. C. Barrett*, a Justice of the Peace at Saratoga; *Anson M. Boyce*, of Saratoga; *Otto Van Belleau*, principal of the boys' boarding school which the prisoner had attended up to May last, all testified to the prisoner's good character. Most of these witnesses testified that he had no vices, while some seemed to regard him as immaculate. None of the witnesses were cross-examined. The District Attorney simply asked the pertinent question of each, “Do you know that he was in the habit of carrying a pistol during the last three years?” To this every one replied in the negative.

*Clarence A. Walworth*, a Catholic clergyman, testified—I am the eldest son of Chancellor Walworth; reside at Albany; that is the original will of my father (document shown him); the executors are Dr. Backus and myself; Mansfield T. Walworth and I were the only two sons of the Chancellor; his daughters were Mrs. Jenkins, Mrs. Davidson and Mrs. Backus; I have known Frank Walworth from his infancy; his character is as near perfect as may be; during this spring I entertained

the project of travelling abroad, with the view of remaining some time; spoke to Frank's mother about his going with me, and alluded to it the week previous to June 2; received a letter from Frank on this subject, enclosing another letter; received them in the afternoon of June 2; Frank's letter is dated "Sunday, 1873;" the letter enclosed is in the handwriting of Mansfield, the deceased; before I received the letters I got a telegram from Frank's mother saying that Frank had gone from Saratoga, she feared, to meet his father; on Tuesday, June 3, I received a telegram from New York saying that Frank had shot his father three times.

To Mr. Phelps—I did not know that Frank was in the habit of carrying a pistol.

*Thomas E. Dennis*, telegraph operator, identified the following telegram sent by Mr. Barrett at the instance of the prisoner.

"New York, June 3, 1873.

"C. A. WALWORTH, Chapel street, Albany:—

"Have shot father three times. Look after mother.

"FRANK WALWORTH."

*Hooper C. Barrett* recalled, stated that that was the telegram he wrote at the direction and in the presence of the accused.

*Mrs. Ellen Hardin Walworth* was the next witness, and being sworn said:—I am the mother of Frank H. Walworth; was married to M. T. Walworth in St. Peter's church, Saratoga Springs, in 1852, on July 29, and resided at the Chancellor's house, which my mother now owns; lived there until the summer of 1861; the Chancellor's family and my two brothers resided in the house at the same time.

The witness then gave the names of her children, with the dates of their birth, as follows:

Frank H., born August 17, 1853.

John Jay, born October 19, 1855.

Bessie, born November 2, 1856.

Nellie, born November 3, 1858.

Clarence, born October 20, 1859.

Mansfield Tracy, born June 19, 1861.

Rubina, born February 19, 1867.

Sarah, born June 7, 1871.

Of these children John Jay, Bessie and Sarah died, the latter in 1872.

In the summer of 1861 I went to Kentucky, near Louisville, my brother Lemuel going with me, and all of my children; lived there until 1867; my husband did not go there with me; lived in Kentucky three years without seeing him; he did not remain in Saratoga when I went to Kentucky; he promised to meet me there; where he went I do not know; during the first winter he was in Washington, and afterwards in Saratoga; I had a country place three miles from Louisville, by means of which I supported my family; the Chancellor visited me there, and three years after I first went there, my husband came to see me, and remained for about six weeks; I next saw him in Saratoga the following summer, and stayed there about a week; in the December following I saw him in New York, at a boarding-house in Madison avenue; I came to New York to find employment, but not succeeding, went to Washington and secured an appointment under the government; I then gathered my children around me and put Frank at college in Georgetown; was eighteen months a government clerk, during which time my husband was with his brother, Clarence, at Albany; when I was discharged, owing to a charge of politics, I went to Saratoga, to the family mansion, and opened a boarding-house, and remained there until October, 1869, during a portion of which time my husband was with me, Frank being then in Louisville; at the urgent request of Mansfield T. Walworth I came to New York, to a house in Twenty-third street, belonging to a Mrs. Montross, all of my children being with me; the very day of my arrival I was taken ill, and continued so until taken to my brother's house in Buffalo; my husband did not go with me to Buffalo; soon after went to Kentucky, and the following summer M. T. Walworth followed and remained three weeks, after which he went to Saratoga; I spent the summer of 1866 in Saratoga; deceased was there for three months, and the whole family was together; then went back to Kentucky; deceased came there in 1867 and remained there until his father's death; I arrived at the Chancellor's just after his death with my infant child, Rubina, but soon returned to Kentucky and brought all my children except Frank back to Saratoga; Frank stayed with his uncle Lemuel; deceased was living with his brother



Clarence, and we discussed the question of a future residence, but came to no understanding about it; in November, 1870, I went to my mother's house in Fifty-second street, New York, Mr. Walworth being with me, and we remained there until the final separation on the 26th of January, 1871; I then went with all my children to Judge Barbour, and since then have not seen deceased; legal proceedings for a limited divorce were commenced in the Superior Court on January 27, 1871, and on the eighth of April, 1871, a decree of separation was pronounced; on the 31st of July following the decree was modified to allow Mr. Walworth to see his children once a month; after I left Judge Barbour I went to my brother, General Hardin, at the Hoffman House; then went to my brother-in-law, Clarence, at Albany; remained there three weeks, and went to Dr. Backus, taking my children with me; from there I went to the old homestead at Saratoga; have remained there ever since with my children; Mr. Walworth addressed me very frequently by letter after our separation; after I left him my youngest child was born; being delicate from its birth, died January, 1872; Mr. Walworth never came near the house and never saw his youngest child; I did not always receive his letters; for the first two or three months I did, but after that it was only occasionally that I received them; some of his letters never reached me; there was no male person in my house who could protect me except my son; Clarence Walworth spoke to me on the Thursday before the occurrence about taking Frank with him to Europe; I told Frank of it that evening; he seemed gratified, but said he should think about it; on Friday he went fishing with his younger brother to Saratoga Lake; returned about six o'clock in the evening and retired early; on Saturday he was arranging his clothes, books and other things and went swinging in the grove; on Sunday he slept until late; some young friends called in the afternoon, and they went to walk in the woods; he wrote a letter on that day and asked me for some note paper, which I gave him; on Monday morning I came down early, and seeing Frank in the hall, said, "You are up early;" he made some casual reply and went out the front door; I thought he had gone to the Springs, and at breakfast table asked why he did not return; some one said that he had gone away and left a message that if he was not back to sup-

per he would not be home that day; I then went to his room, and on looking around found an empty envelope in the handwriting of M. T. Walworth; I immediately telegraphed to Father Walworth and to Judge Barbour; but could ascertain nothing about him, and then believed he had gone to Troy.

The envelope she found was produced. It was postmarked "May 30th."

A recess was here taken, after which Mrs. Walworth again took the witness stand and identified a document which proved to be a stipulation modifying the decree of divorce, signed by her, and said she had a counterpart of it, signed by Mr. Walworth; she supported herself and children entirely by her own exertions, with the exception of about three hundred and fifty dollars received from the Walworth estate; while she lived with Mansfield T. Walworth he always carried a pistol. A pistol being produced, she said it originally belonged to a Mr. Adams, who is now dead, and which was given by Mrs. Adams to Frank to take care of some time in 1870, since which time he has had charge of it; the way I found my husband's letters had been kept from me was that Frank gave me a large package of his father's letters a few months after the separation, under my promise not to read them; since that Tuesday, (the day of the murder,) I have found numbers of letters in Frank's secretary; I know he was advised to keep them from me; a few reached me. (Several letters were here shown her, one by one.) This letter I have seen before; I know Frank saw it; it must have been received in August, 1873. (This letter was dated August 13, supposed to be in 1872.)

The following letter, written by the prisoner the Sunday prior to his fatal visit to New York, and received by his uncle in Albany on Monday, June 2, 1873, was then read:

"SARATOGA, N. Y., Sunday, '73.

"DEAR UNCLE—Mother told me of the invitation you extended to me to accompany you to Europe. Having only recently any desire to go to Europe, the invitation was particularly acceptable, and as I would have to leave her soon any way to attend the Albany Law School, I told her (on her intimating that you wished an answer 'in the morning') that she might say I would like to go. I am of the opinion that it

would be neither safe nor wise to leave her unprotected against father's acts. In fact, I do not think her situation is by any means a safe one as it is. I enclose a letter from father to her, which I received yesterday. I am going down to New York in the morning to try to see him, and I may add, without informing mother, for she would feel very uneasy. My trip will determine any question in regard to my going to Europe or anywhere else. I will be heartily sorry if I shall have caused you any trouble or expense.

"Affect. your nephew,

"F. H. WALWORTH."

Mr. O'Connor then read Mansfield Tracy Walworth's last letter to his wife, and which she never received, it having been intercepted by Frank and afterwards sent by him to his uncle, enclosed in the letter above given. This letter (supposed to be of May 30, 1873, instead of May 3) is as follows:

"MAY 3, Seven o'clock in the Morning.

"Prepare yourself for the inevitable. I am getting over my wasting fever and shall be out of my room in a few days. I am going to call upon my children; my heart is starving for their caresses. Make the interview as easy and pleasant as possible. I cannot stay from them much longer. I will see them—peaceably if I can, or with a tragedy if I must. Their little faces haunt me, as they are mine. Popish cruelty must bend to the demand of a father's breast, or the Walworth name goes out in blood. Keep Frank Walworth out of my way. You have taught him to hate me, and his presence or obstruction in any way will only excite fatal exasperation. I want to see my little girl and come away peaceably. Beware that you do not in any way arouse the frenzy which you have known to exist since you left me. There is a reasonable way to deal with me. I shall have my rights under that decree, with no further legal delay or expense. I have conceded promptly every right under that decree, and now I am going to see my children, and you shall not bring them up to hate their loving father. Eliza Backus has written to me that you will do it if you can, from your associations with them; and then I shall shoot you and myself on those door-steps, for I have nothing further to live for. I am a broken-hearted des-

perado. I admit it. Save this letter for lawyers and courts if you please. God is my lawyer ; not the remorseless, brutal god that you and Eliza Backus and C. A. Walworth worship, but that God who has planted love in my heart for my little girls, and that says to the tiger bereft of its young, "Kill!" You are an infamous wretch to keep me for more than two years from the little hands and hearts that love me. Your only excuse was my poverty and misfortune. When Frank refused to speak to me in the streets of Saratoga I said to myself, "She is teaching them all to hate a broken-hearted father." Then all is lost and the tragedy must come. When I know from the conduct of my little girls that you have taught them to hate me, that moment two pistol shots will ring about your house—one slaying you, the other myself. I know that you have no personal fear, no more than I have, but we both must die when that discovery comes that you have estranged my young children from me. It is possible that you have not done so, and you shall have your life. If my little girls do not love me, then life is valueless, and I shall die with a feeling of luxury and rest to come ; but you will have to attend me to the spirit land. The God of justice demands it. Therefore I say to you do right under that decree, then all may be well ; but now my heart is agonized for my little children. If you had common sense you would know how to appreciate the danger.

"MANSFIELD TRACY WALWORTH."

After some discussion by counsel as to the admissibility of the letters identified by this witness, the Court adjourned.

Upon the opening of the court room on Friday morning it was immediately crowded with spectators. Such eagerness to catch a sight of the prisoner and such anxiety to witness the proceedings were never before evinced within the recollection of the oldest court *habitué*. At no criminal trial either has the attendance of ladies been so large, and they sat all day with heads craned forward with curiosity that never slackened. Mrs. Walworth, the murderer's mother, came in promptly at ten, leaning on the arm of her husband's brother, Father Walworth, and the prisoner came in almost immediately after, and conversed cheerfully and unrestrainedly with

her until the "Hat's off" of the court crier called attention to the important business of the day. Many of the friends and relatives of the prisoner's family were also present.

After argument by counsel, Judge Davis decided to admit the letter of Aug. 13, 1872, in part. He should strike out all which was merely historical, however coarse, and admit the threatening portion alone. He said that the late decision of the Court of Appeals (Stokes' case) seemed to permit a wider latitude, to engender a tendency of liberality in the construction of the law applying to this character of evidence, and, as there was a doubt, he should give the benefit of the doubt to the prisoner.

Mr. Beach took exception to the ruling so far as it excluded any portion of the letter.

The portion of the letter ruled out by the Court was also read at last, the District Attorney consenting to have it go before the jury with the rest.

The following is the letter in full:

"PUBLICATION HOUSE OF CARLETON & Co., }  
UNDER FIFTH AVENUE HOTEL, }  
NEW YORK, August 14. }

"Listen to these terrible words. They will show you how keenly and fiercely I feel the humiliation of Reuben H. Walworth's will, and what a Scot, the descendant of King Malcolm, will do when all has been taken from him. Reuben H. Walworth always hated me from my cradle. He always hated any one who was high-spirited and would speak out their thoughts. He always liked cringing hypocrites, like Eliza Backus and Clarence Walworth. Although he saw my ambitious spirit he hated it because it would not toady to his favorite Yankees. Hence from my cradle he persecuted me and headed me off in every pursuit or speculation. I could not please him in anything because I would not whine to him about his favorites. Everything that I ever wrung from him, even my pay in the Spike case, was wrung from his fears. The only reason that he did not omit my name from his will altogether was that he respected my talents and hoped I would write his life. He knew nobody else would. But he has stung me into madness and broken up my family by placing me in the humiliating position of being under a trustee,

and that trustee my brother, who has neither ambition nor heart. From his grave he glares at me and says:—‘Ha! ha! You were always proud and high-spirited, but by my will I have put in your side a thorn for life. You have no dignity under it, and it will sting you to your grave. The only ones of my name who have any dignity under my will are your sons, Frank and Tracy, who will bear my name to posterity.’ Now, Ellen Hardin, knowing that I am helpless under that will, if you will persist in trying year by year to see how much of that ~~trust property~~ **property** you can get out of me by threats of law, by personal blandishments to my trustees, or by any other means; if you doubt and will not see that I ought to have something for my entire life, whether he intended me to or not, then mark what will be the finale of my vengeance upon that dead scoundrel dog who has made me so pitiable before men and before you. I will—so help me the demons who wait upon the persecuted and the proud spirited and the revengeful—I will, when stripped by you of my property (and you mean it at last), plunge my dagger into Frank and Tracy’s heart, and cut off the Walworth name forever. God d——n him, he has elevated them and degraded me, and you gloat over it. I have not one single firm right under his will. This you believe, and this has been the cause of your despising and abandoning me. With cold calm purpose you contemplate my eventual beggary and humiliation. I will kill your boys and defeat the d——d scoundrel in his grave and cut off his d——d name forever. Now you just persecute me about that property, and keep this thorn alive in my heart, by the eternal God I will kill them and you too. Now you hunt my property any further — — —, and I will kill your boys as well as you. The — — dead villain shan’t rob me of wife, children and property. If I can’t have anything, I’ll have revenge. — I have lost nearly everything which makes life tolerable.”

(The letter is without signature).

The reading of this letter was listened to with the deepest attention and caused profound sensation. The mother and son sat apparently unaffected during the reading.

Mr. O’Conor then read the provisions of the will of Chancellor Walworth affecting his son Mansfield. His share is

given in trust for the use of himself and family. Mr. O'Connor also read the decree of divorce, dated February 7, 1871, providing for the separation of Mansfield T. Walworth from his wife Ellen T. Walworth, and for the maintenance of herself and children.

*Mrs. Ellen Hardin Walworth* then resumed the stand, and her examination was continued by Mr. O'Connor.

Q. After decree of divorce, when did you first learn that Mr. Walworth had any wish to visit or see his children? A. In the fall of 1872, I think in November.

Q. Had you known of this clause in the decree before that time? A. I had.

Q. Did you oppose in any degree his being allowed to see his children? A. I did not, I was willing that they might be seen in presence of their uncle, Rev. Clarence Walworth, upon a week's notice to my attorney.

Mr. O'Connor, after some preliminary questions, now asked whether any acts of personal violence had been committed upon her by her husband, while they resided in Fifty-second street, in 1871.

Mr. Phelps objected, and Mr. O'Connor stated that they intended to prove that such acts were perpetrated, and young Frank came into the room at the time; that it had a very great effect upon him for a long time.

The Court—Do you intend to allege that he was insane when this act was committed?

Mr. O'Connor—We intend to allege that his mind was so affected that he was not sound at the time of his interview with his father.

Mr. Beach—We shall furnish evidence showing that the state of his mind was such that he was not responsible.

The examination was resumed and the witness said: My son was called in on that occurrence; it was about eight p. m.; it was about ten days previous to the separation. I had been subjected to physical violence, which compelled me to scream; my scream brought in Frank; he did not leave me till mid-day of next day; my husband remained in the room until next morning; I noticed in Frank a repetition of the peculiarities I had noticed four months before when I had first indicated to Frank that his father had used personal violence to me; I showed a severe bruise on my arm; he showed extreme pallor,

and I noticed a pinched look on his features expressing severe suffering, both mental and physical; it alarmed me so much that I did not, on his account, afterwards tell him; he was very quiet, and simply said, "This must not be!" On this occasion, in January, as soon as I myself recovered, I noticed the same symptoms; when he came in he had his hand on his father's shoulder, and said, "Be quiet, father;" there was no further violence by his father; after the first occasion I rarely spoke to Frank of his father; we very rarely spoke of him; on a few occasions during the first few months when I was receiving Mr. Walworth's letters, I saw him reading them, and noticed some of the same symptoms each time; afterwards, when I ceased to receive them, I frequently noticed similar symptoms without knowing the cause, and thought his health was affected; once I saw him most violently affected, as I knew next day by receiving the letter which he had read; I was called up by one of the children saying: "Frank is sick;" I went up and found him with his body rigid and this pallor of which I have spoken; I applied such restoratives as I could, and he shortly fell into a profound sleep for an hour; I noticed similar symptoms on various occasions, in greater or less degree; he was, before I first let him know about his father, a very gay, joyous boy; after that he was at times very quiet and abstracted; there was a notable failure of his memory; we used to laugh at him as absent-minded; he would go to his room for some article of dress to go out and come down without it; go down street and forget his errand, and after locking up the house would go round to lock up again, sometimes two or three times; he was abstracted at the table; several times screams from his room woke me up and I went to his door; his pillow was stained at times; I saw Frank the Monday he left Saratoga; I noticed his extreme paleness then; noticed his great paleness; when he was in these fits of abstraction he generally had a sad look; he was always courteous to others, but before this he was lively; he was not subject to fits of anger; his character, so far as I know, was invariably good, both as to amiability and uprightness; there was nothing to call a vice, or, in the ordinary sense, an irregularity in him; he was always amiable and kind in the family, but not demonstrative; he had never in my hearing uttered any threats against his father; I mentioned to Frank an oc-



currence which took place at the Hoffman House between his father and my brother; I told him that his father had entered my brother's room, while he was in bed, and presented a pistol to his head while he was in bed; that fact I had no personal knowledge of; it was stated to me.

Mr. O'Connor produced four packages of letters written by Mansfield T. Walworth, which were identified by witness as in his handwriting. The packages were marked "Exhibits 9, 10, 11, 12, 13, and 14," and were to be read in evidence to the jury at another stage of the proceedings, unless the ruling of the Court should be adverse to their introduction. The first contained 19 letters written by the deceased to Mrs. Walworth. The second exhibit contained two small sheets of paper in separate envelopes wrapped around several percussion caps, balls, and a small quantity of powder. The remaining exhibits contain about the same number of letters written to Mrs. Walworth at another period, and to her brother, General Hardin, and Mr. Walworth's sister, Eliza Backus.

Mr. O'Connor then asked Mrs. Walworth concerning the condition of her husband's mind.

The question was objected to.

Mr. O'Connor insisted that an important element in estimating the condition of the prisoner's mind was the condition of the parent's mind; and these letters, not one, but many, could hardly have proceeded from any but an insane mind. It was with a view to show a hereditary stain of insanity that these letters would be admissible.

The Court in this view admitted the questions.

The Witness—I have seen him in his conversation about very ordinary topics suddenly begin to talk upon some other subject and work himself into confusion, throw his arms violently about, and talk very violently and very unnaturally; he wore a very curious expression, and when he did not act with violence towards myself he generally expended his fury upon some object in the room—perhaps a piece of furniture; and anything he happened to have in his hand he would break; I do not know that he would expend his fury upon any animal; it was in the summer of 1865 I first noticed his very violent manner; it was in 1871 that I finally left him.

The Court here took a recess, after which the examination of the witness was resumed by Mr. O'Connor. She was asked

to state the peculiar acts of violence on the part of the deceased, in reference to herself, as showing his temperament and disposition. The Court, doubting the propriety of this course of inquiry, it was suspended.

Q. Did you notice anything else peculiar about Frank after these spells? A. I noticed a peculiar flush of the face sometimes and spots over the upper part of the face at such times; when he came out of these spells it was with a start; on one occasion he fell and injured his head; that was when he was seven or eight years old; he was struck in his base ball club once and complained for some months after of his head.

A pistol was here shown.

Witness—I know this pistol; it was presented to the Chancellor by the inventor; he gave it to Mansfield soon after and he had had it ever since; he had another pistol besides.

Mr. O'Connor informed the Court that the five barrels were loaded, and a court officer, by direction of the Court, removed the chambers. This was the pistol which had been found in the room of Mansfield Tracy Walworth.

This closed the direct examination, and Mrs. Walworth was cross-examined by Mr. Phelps. In reply to questions she said: I saw Frank's pistol in his possession two weeks before he left Saratoga: he used to keep it in his room; I had no intimation of his departure, on that Monday, until I received the message that if he was not back to supper he would not be back that night, but he was speaking of going. In reply to further questions as to the peculiar conditions of her son's health, she stated that she noticed a certain rigidity of the limbs which would last perhaps half an hour.

Q. When did you last see Mansfield? A. From the time I left New York, in January, 1871, I never saw Mr. Walworth again; his occupation was that of an author; his first book, written soon after our marriage, was "The Mission of Death," the next was "Lulu," then "Stormcliffe," and then "Warwick." He might have written another between "Warwick" and "Lulu;" then he wrote "Beverley" and "Delaplaine;" I remember there was an earlier one, called "Hotspur," which came after "Lulu."

Mr. O'Connor, taking up a book, read from it a list of Mr. Walworth's works in the following order, and it was taken by the Court that they were produced in that order: "Warwick,"

"The Mission of Death," "Hotspur," "Lulu," "Stormcliffe," "Delaplaine," and "Beverley." It is in "Beverley" that Mr. Walworth is said to portray his own unhappy life and experience, or a large portion of it.

The witness further stated that she did not know how the two volumes of MS. of the late Chancellor's writings got into Mansfield's possession.

*Clarence Jenkins* was re-examined by Mr. O'Connor.

Q. You stated under examination, that you went to the room of Mansfield with the Coroner, to remove the articles there and take care of them. Did you find a loaded revolver?

A. I went there on the Thursday before the body was removed from the city with the Coroner and Deputy Coroner Marsh, to get the clothes, and in the drawer we found the pistol loaded, and it has so remained; I called the Coroner's attention to it, and he examined it, and replaced it in the drawer, and locked it in; it remained there until I took it; it remained in my possession until I gave it to you just now.

On the cross-examination by Mr. Phelps, the witness said: I am connected with the family; I went to get possession of the property under authority of Mrs. Walworth; I found a great many writings of Mr. Walworth in the room.

To Mr. O'Connor he said: The deceased occupied a single room in a tenement-house.

*Mr. Amsden* testified—I reside at Saratoga Springs; I am a gun manufacturer; I knew Chancellor Walworth quite well; I know Frank Walworth quite well; I have seen considerable of him for a year; we have been in the habit of playing whist together; I saw him one Monday morning, on Broadway in Saratoga; it was near the railroad station, but on the other side; one of us introduced the subject; he said, "When shall we have another social game of whist?" I said, "Any day this week; this afternoon if you like;" he said, "Won't tomorrow afternoon do as well?" I said, "Any day you like;" his character was irreproachable; never heard he had a fault.

A number of letters were then read by Charles O'Connor, written by Mansfield Tracy Walworth to his wife. They were read as Mr. O'Connor stated, for the purpose of showing the insanity of the deceased, with the view also of deducing the inherited insanity of his son and murderer. A great majority of the letters were written while the divorce proceedings be-

tween Walworth and his wife were pending, and the man seemed to have been maddened by the delays and postponements which were entailing expenses upon him, preventing him from proceeding in his literary work; and he charges it mainly to her and her lawyer. An important fact about the letters is that very few of them have any signature attached, and they are identified by the handwriting. They are very long, one containing five sheets, and are written in an irregular, spreading hand, with the lines unevenly spaced. The date of the first letter is not given. It reads: "Why do you not sign the papers which your lawyer says he sent to you? Is it not an honorable settlement, and was it not signed by me promptly? I waited weeks and weeks patiently, but your lawyer said the doctors wouldn't allow you to attend to any business or sign it; and now, with the most marvellous breach of good faith, your lawyer has ruthlessly and treacherously gone to the Trust Company which, by settlement, the lawyers stipulated should be left alone. If you incited him to this breach of faith you met a most signal failure. Are you, his instigator, two-faced also? I made you some offers to get to my work, and gave you about \$250. As — is my judge I never received the document, which I would have abided by; but now I will never make such an agreement. Already \$250 of my precious money gone to my lawyer.

"J—— God! aren't you going to sign the agreement your lawyer sent you? You are a demon, keeping me from success by wasting the precious dollars and tormenting me after a settlement has been agreed upon. Great God, woman, let me go to my work. The hardest time for "Delaplaine" is here. In six weeks the fate of the book is told. Ellen Hardin, sign this paper which you agreed to sign. Great God, are you going to allow that crafty lawyer to get your name and to get my name as the author of "Warwick," to spread his name before the American public as a divorce lawyer? For, as sure as God is in heaven, if this agreement isn't signed I will place the fact before the public; but that is not my only resource; there is murder and suicide also! I waited six weeks patiently, and, by the — God, I will give you no more time, but throw "Delaplaine" into the ditch, re-open the divorce and sue for my children, unless you sign the agree-

ment, and will devote the rest of my life to fighting in the courts, and with murder and suicide in the end."

"July 17, 1871.

"You — dishonorable —. \$200 more of the precious money gone to my lawyer. I cannot get into a situation where I can start afresh, and every delay causes loss, and the plank is riven from under my feet and I am on the verge of beggary and desperation every hour. Why do not you sign and give me a chance in life? I signed promptly. Why must this — extortion of money for every adjournment go on? Don't you know that your lawyer is charging you for every delay? Oh! I am crazy for just a few dollars to push my book "Delaplaine" into success, and "Delaplaine" is dying—dying! Two years more of my life wasted! Oh! — on Calvary—but do not think the last cry means weakness; as, by the — —, in wasting my time you have armed me. May — —, you. I revoke every promise I made you. I do not revoke my legal agreement. I stand by it as I do by every honorable agreement I ever made. It is your lawyer that played me false. This last trick of your lawyer, that it is necessary to make a stipulation that I will not break my engagement, is frivolous. Why didn't he think of it before? I do not care a —; but put it in fifty times if you like; but hurry up, and stop this useless waste of money, since the first day I entered Charles M. Whitney's office. Eternal —, can't we get it signed? He told me the lawyer had put the money stipulation into the agreement of his own option; and even Judge Barbour says to me that Whitney is a Yankee puppy, making out of the misery and patience and agonies of others, delay and pay, and to get it before the public in the courts; and I am — sure he is pursuing the course to get it there. I agreed with Judge Barbour to relinquish all nearly to you but two hundred dollars, and Whitney never sent the agreement to me, according to promise. He is a — — liar; he never sent it to me. Hurry up for — — sake — — you. You are a fool."

"July 8, 1871.

"Your lawyer asked another adjournment to-day. I cannot hold out longer. The pistols are loaded. If you succeed in

getting the \$950 from the trust estate of my father I shall shoot you, stamp out your life with my boot, and shoot myself if your mother is not near. If she is near I will use the second shot on her body and the third on myself, behind the ear. Why? Murder for \$950, you ask? Why? Because you robbed me of my young; and now, in my miserable agony, on the loss of all that makes life tolerable, you remorselessly seek to knock from under a despairing wretch the last plank on which he can succeed. I went to Judge Barbour's to kill you; that door chain alone saved you. If you do not sign the papers your lawyer says he sent you to sign, and which your sickness alone prevented you from signing, I shall shoot you. You are dealing with a despairing, demoniacal murderer, or whatever despair makes a man. Sign — quick."

"July 29, 1871.

"Your lawyer says to my lawyer that on Saturday he put a slight modification in the articles of agreement which he thought necessary for your protection, and laid before you to sign. Is that truth? And is the delay solely due to your not signing? He says so. Great — cannot this thing be closed promptly and business like, and the waste of money on the lawyers stopped? By the eternal —, I cannot be trifled with any longer. Sign promptly and business like. Why am I so eager? Because I am hungry, and starvation begins to stare me in the face; and this, added to the agonies of my heart, will make me murder you myself. Oh, can't you see it? Won't you sign it and make your lawyer close it up as quickly as he can? Can't you telegraph to him to hurry it up and close the business? I am so hungry and so weak, and the pistols for you are lying loaded beside me all the time. My book failed to bring me money and my efforts to get a situation have failed. I am a hungry demon, and am longing to lap my tongue in soft blood. You are making your grave by delay. But we shall lie so peacefully side by side in death. O sweet Death! Sweet Death."

"SATURDAY NIGHT.

(Supposed to be July, 1871.)

"I have just come from the lawyer's office. He says the agreement has not been signed and returned from Saratoga.

— — you. Sign it and let me out of the expenses of the law. May — — the expenses of the law that are begging me! — — you. You are planning some other evasion of your plighted word. Beware of me. — — you. I am dangerous. Listen to the murderer's hiss, and beware of me! You robbed me of my children and you want to rob me of my pittance. I am watching you with a hawk's eye and a despairing heart. Woman, why in God's name don't you sign the papers? The pistol is lying beside me loaded that will relieve me from starvation and hell, and like a flaming demon I will scatter your brains. I am in earnest, — — you. Do the words sound tame on paper? Hog's — —, I will murder you for depriving me of my sweet, darling money. Hist! hist! hist! Let that ring through your — — inhuman ears. The broken-hearted wretch will drag his torturer with him to hell.

"July 28, 1871.

"Again to-day I have been to my lawyer. He says the papers to be signed by you are still in Saratoga. You are delaying, — — of hell. Another adjournment to be paid for and the pennies scarce! The hopeless wretch grasps his pistol! You take from the hopeless author his last hope. Vile — — avaricious wretch, I grasp the deadly weapon for both of us. Stand off that property! You robbed me of everything sweet in life and of peace, and I want to wreak a dying vengeance on you if you do not relinquish your grasp on the only thing. — — you, you can appreciate my money. Sign the papers you agreed to sign long, long, long ago, and I will let you go, — — dragging my heart-strings after you. But let go my sweet darling precious money. Too late I have learned that money is the hope of life and that for industrious poverty there is no home, no hope, no success in life, no love of children; and I clutch the money with a demon's clutch, with a murderer's clutch and I would gladly murder for it and die. Sign the papers which you agreed to sign, — —. You have miscalculated Mansfield Tracy Walworth as others have done. You will awake to the reality when you beggar me and the bullet crashes through your skull and through mine. Stand off — — you! I asked you to do nothing which your lawyers have not stipulated for, — — you, false, cold, demon-hearted — —."

"Monday, 10 A. M. (supposed to be July 7).

"That same pleading, ever-present determination is working me up to the final tragedy. I go down in five minutes to see if my lawyer has received and filed the agreement signed. But my superhuman second sight tells me that you have again prevaricated, and that Chancellor Walworth's younger son must be a murderer and a suicide. So be it! I have done all I could to avert it. I have waited patiently for weeks. You are pushing on your doom. By the eternal — —, Ellen Hardin, the purpose of three years of your life of abandoning me and grasping that property shall be thwarted in your blood and mine. If you fail the catastrophe comes as sure as fate, — you. All the intensity of hate in my life is centered on you. Listen for the crack of the pistol!"

"Publication House, Carlton & Co. }  
August 27. }

"Sign this paper and I will trouble you no further. The devil says to me, you fool, she wants to beggar you; she wants two-thirds since her father died; she has kicked you out like a dog; she does not care a groat whether you succeed or not; she means to torment you about that property, because she is a — woman—a thief, a traitoress. Now sign this paper, and I will try to bring this tortured brain once more down to literary work. My lawyer says, she will never sign anything that you want her to because she gloats in torturing you. — you, Ellen Hardin. It is in me to succeed at books if you leave me alone and take the apprehension of law-suits from me. Sign this paper or a tortured author will kill you, by —. Why did you make me give up my children to you and make no fight for them? Because I thought the trust property would be left to me and that I could succeed as an author. My lawyer says, she says I am a fool; that she hates me; that you say you will do nothing that I want you to do just to keep you uneasy, and that your brain cannot bend to literary work; she knows that if you succeed her affidavits must be perjuries before the world. Now, sign this paper, or I will murder you. I do not believe in any God, but I believe there is a devil, and that devil is you. Why in the name of common sense, after you robbed me of the sweetness of life, do you not leave me in undisturbed possession of the property, so that I can



stay in New York and work? Here industry accomplishes wonders, even in the mere profession of authorship. Sign this paper as a guarantee. What did Whitney mean when he said there would be more trouble about the property—that the Hardin's pride will not allow them to contend about this little property? In the name of God, when I gave you my children for money, am I not allowed to live in peace, when I would sell my soul for it? Oh, money is as sweet to the Hardins as anybody else; but there is not one of them who has courage to murder for money as I have, and I will if I am not left in peace with this two-thirds; for when that goes my last plank of ambition will be taken from under me and I will murder. So hard, so hard is an author's fate."

*(The agreement which he wanted signed.)*

"I promise before God to abstain against all law-suits or take any of the property. I am satisfied with one-third which he has relinquished for my relief. I know he has hell enough to carry on his mind from remorseless children, without my crippling him by law-suits for the money. Sign this paper to give me mental rest, necessary for literary work. I will not approach his trust again or enter any court so long as I receive one-third trust property."

The reading of the letters continued from about half-past two o'clock until ten minutes past five o'clock in the afternoon. They were all of the same ribald, blasphemous tenor, some of them absolutely surpassing belief. The court-room was as still as death. Every voice was hushed but that of the great old lawyer, and as his clear, emphatic tones rang through the corridors outside, every heart was stilled with horror. One letter was addressed to Judge Barbour, threatening him that he would shoot him in the public street and fall a suicide over his body if he interfered between his wife and himself, and if his property was not restored to him.

Another was addressed to Father Clarence Walworth, announcing that he intended to kill him if he egged his wife on against him, and saying that he would spit upon the religion which could make a saint out of such a — as him. In some were found bullets and caps, and in others powder.

In one was found an extract from a newspaper in which the

foul murder of a wife by a husband was described, and this he likened to the tragedy which was impending over her.

One addressed to his sister, Mrs. Backus, threatened herself and her family with death if \$200 of property, which he said was kept from him, was not restored to him. He said the book trade was — — — bad, and that \$200 would have got him circulars, and he could have made a success of his book and made hundreds of dollars.

Another to Mrs. Backus was as follows:

"MY DEAR SISTER: I have conceived the great secret of my existence. I was not born as men are, but was let down from heaven in a basket. All who have preceded me are impostors. I am the true Messiah. It will cause a great commotion on the earth when I am summoned, for I shall be a soldier-king, and live in heaven—the home of my Father-God. \* \* \* You, of course, are not morally my sister, but during our terrestrial intercourse you have manifested such kindness for me that I shall make you one of the queens of the earth. \* \* \* Keep this secret until I am announced by the sound of 10,000 trumpets, then fall down and worship me, for I am M. T. Walworth, the true and eternal son of God."

And so the letter runs on, like the ravings of an excited maniac.

At the conclusion of the reading of the letters, the Court adjourned till Monday.

On Monday morning, June 30, the Court met at ten o'clock. The proceedings were delayed some time by the absence of one of the jurors. Immediately after the Court met, the prisoner, accompanied by his mother, uncle, and a number of other relatives, was brought in and counsel for and against him appeared in their seats. The court room was at once filled. The prisoner's uncles, aunts and numerous relatives gathered around him and almost screened him from view of the curious. Next him sat his mother, dressed in deep mourning, with a face of Parian marble in its beauty and coldness, and the two held whispered converse all through the long wait for the juror. No anxiety was visible in the countenance of either. Sometimes a ripple of a smile would cross the countenance of

both, and again a sudden look of intense affection would illuminate the eyes of each and be gone.

At 10.40 the juror Mr. Chamberlain, was still absent. Justice Davis asked the other jurors if they knew any reason for his absence. The foreman replied that Mr. Chamberlain went to Milburn, N. J., on Saturday. He promised to return at 10.15 to-day.

Almost immediately after Justice Davis received a dispatch, as follows:

“TURNER'S STATION, N. J., June 30.

Train broke down. Will be two hours late. J. A. C.”

A recess was then taken till one o'clock.

At half-past one all the jurors were in their seats, and the trial was continued by recalling Mrs. Walworth to the witness stand.

Mr. O'Connor repeated the question of a former day as to acts of violence to denote insanity, and the witness continued:— In the summer of 1865 I was spending a few days at Saratoga and had been on very pleasant terms with Mr. Walworth; one evening at that time I went out with Chancellor Walworth and two friends; we visited one of the hotels, staying for a short time and returning about ten o'clock; on my return I found that he was in the room and that he had the door locked; after knocking a couple of times he opened the door; he looked with fury at me, and with a terrible oath exclaimed, “I will show you how you will leave me of an evening again;” he seized me by the arm and shook me with great violence; he pushed me against the furniture and literally tore the clothes from my back; when I took up my infant to leave the room he commanded me in the most threatening manner to lay it down again and myself; in an hour or two he fell asleep and I escaped from the room. He had been in the habit of acting in a very violent manner for a great many years.

Q. After this occurrence in 1865, just detailed by you, state any further subsequent acts that recur to you. A. In the summer of 1869, when my sister had sent me some clothing and other presents of various kinds for the children, without any previous signs of displeasure, he arose suddenly in the night, and swore at his sister in a most violent manner and commenced to search the house for the articles and de-

stroyed them; at that time his appearance was very remarkable, as were also his words and gestures.

Q. State as well as you can the nature and character of his appearance when he was enraged. A. He was always extremely pale and had the look of a wild beast; I cannot imagine any other expression like it.

Q. State any other instances of this violent conduct or variety of acts which you then observed. A. At another time, about nine o'clock, after spending a quiet evening, he came to my room door, and as I opened the door I saw that he wore the same terrible expression; and, with both arms uplifted, he uttered those fearful exclamations, "Hardin shall not rob me of my wife and children," although we had not seen my brother for a long time previously; he then struck me violently, and raised me in his arms in the most violent manner and threw me on the bed, where I lay for some time unconscious; on another occasion he suddenly sprung on me and struck me.

Q. And all this was done suddenly and without previous cause of excitement? A. Yes.

Q. So that his acts on these occasions were altogether unaccountable to you? A. They were.

Q. Was his violence on these occasions great and serious? A. Yes sir, they were great and serious.

Q. And you stated that these acts were always accompanied with oaths? A. Yes, sir, they were.

Q. Can you state any particular instance to present any different illustration that appears to you that might account for those acts? A. At the time of his father's death he was subject repeatedly, perhaps every day, to those violent furies, in which he would abuse his father and brother; he did not expend all his fury on me; he would strike the furniture and break it with whatever he might seize in his hand; he did this very frequently after his father's death.

Q. On any of these occasions of this peculiar conduct did you receive any such violence as the use of his teeth upon you? A. Yes, in my finger; he bit my finger severely.

Q. I observe that in those letters which Mr. Walworth addressed to you, to several of them are no signature. Do you know any reason for that? Was that a habit of his? A. It was not his habit when he wrote ordinary business letters.

Q. What was his condition as to strength and height? what sort of a man was he physically? A. He was five feet eleven; an unusually robust man; in the habit of exercising himself by long walks; he used the dumb bells as long as I knew him.

*Cross-examined* by Mr. Phelps—How long prior to your leaving him was the last act of violence? A. About ten days; after that I was ill.

Q. Was he aware of your intention to depart before you left him? A. He was not.

Q. After the act of violence which occurred ten days before you left the house, had you any interview with him? A. He came to my room; but never without some one being there.

Q. At what time did you leave the house? A. In the morning, about ten o'clock.

Q. I understood you to say that from that time you never saw him? A. I did not see him again.

Q. Have you any means of determining in a general way the letters which you received from him and know the contents of, and those which were since shown you? A. Yes; I think I can distinguish between them.

Q. Can you discriminate between all these letters as between those you first saw and those afterwards shown to you? A. There might be a few I could not point out, but as a general thing I would know them all.

Q. What was the last letter you received? A. The letter I received 7th August, 1872.

Q. Did you understand that the letters produced in court and read here were all the letters received? A. Not quite all; Mr. O'Connor has some more.

Q. Did you answer any of those letters? A. I did not; I wrote one letter about two or three weeks, perhaps, after I left him; I submitted it to a friend—my lawyer; that letter was given to him, I understand; I never sent him a line after that.

Q. With the exception of that letter which was submitted by you to a lawyer before sending it, you have had no communication with him of any description since the separation? A. None at all; he may have had messages from my lawyer.

Q. You communicated nothing directly with Mr. Walworth? A. Nothing in any way.

Q. The letter dated September, 1872—did you receive that?  
A. No.

Q. Have you seen any letters later than August? A. I don't think I have.

The witness then left the stand.

Two packages of letters were handed to her, which she examined at the table beside which she sat, on the immediate right of the prisoner. After a brief examination of the letters contained in these packages she handed the packages back to Mr. O'Connor, with the letters withdrawn from them which she herself had received.

An entry was here made on the minutes that the District Attorney had withdrawn his objection to the reading of any letters, and that there was no exception in reference thereto.

Q. By Mr. O'Connor—Are those all you received and read prior to the first of June? A. Yes; I think that is all.

Q. You stated that some of those letters found in Frank's secretary were unopened? A. No; it was some of those that were handed to me that were unopened; this was seven or eight months after the separation; at that time there was a package of letters handed to me, and among these were those unopened ones.

Q. What letters were those that were unopened? A. I think they were generally those which contained powder and balls.

*Lemuel S. Hardin*, uncle to the prisoner, was next put upon the stand. He testified: I am the son of Colonel Hardin and a brother of Mrs. Walworth; I live at Louisville, Ky.; I lived with my sister in Kentucky from 1861, while she was there and her husband was away; I have known Frank all his life; I spent my vacations in Saratoga with the Chancellor; I think Frank is the best boy I ever knew; his devotion to his mother was perfect; I never heard him speak ill of his father; never heard any one speak ill of him.

To Mr. Phelps—I never saw him angry; he was fond of sports and cheerful, but not demonstrative; he had a fund of humor in him; he was never irritable or irritated; he was better tempered than myself; he was in my office six months about two years ago; can't fix it nearer; it was before the separation, at least before I heard of it; I heard Frank was with his mother when that occurred.

To the Court—I was opposed to his reading law, he was so young, but he seemed so settled and so little disposed to frolic that I assented.

*Gen. Martin B. Hardin*, another uncle of the prisoner, testified :—Is a brother of Mrs Walworth ; was stopping at the Hoffman House, in New York, at or about the time at which his sister finally separated from her husband.

Q. What was your condition as to health at that time? A. I had been invalided for some years, partly on account of wounds and partly from disease contracted in the army ; at that time I had not entirely recovered from my wounds, nor have I yet ; I was suffering from severe wounds, as well as having lost an arm ; I was, in fact, hardly able to go about at the time, and it was only excitement that kept me up.

Q. Did you receive a visit from Mr. Walworth while you were at the Hoffman House? A. I did.

Q. At what hour of the day or night was it? A. It was about four o'clock in the morning ; I was asleep at the time.

Q. Was there any one else in the room with you at the time? A. Yes ; there was a lawyer there, writing.

Q. Drawing up papers for the purpose of beginning the divorce case? A. Yes ; we had been engaged with them through the night ; I went to bed about two o'clock ; was asleep when I was awakened.

Q. By what were you awakened? A. By a violent knocking at the door.

Q. What then happened? A. The lawyer jumped up and opened the door ; Walworth came in and walked quietly up to the foot of my bed ; he kept his hand by his side ; I was still lying in bed ; watched him closely ; he asked me, " Where is my wife ? " he kept questioning me ; told him to keep quiet and allow me to dress ; he was very much excited ; I arose and was putting on my pants, still keeping an eye on him closely ; I suddenly jumped towards the door and drew it after me ; he pursued and forced the door open ; he had his pistol in his hand ; he presented it at me, but I escaped behind a double arch that was in the hall ; people then came rushing to the spot ; the lawyer had rung the bell, and this gathered them ; in a few seconds a policeman came and arrested him.

*Charles L. Pond* testified that he was a student of Union College, Schenectady ; was an intimate friend of the prisoner ;

for the last year and a half he had noticed a great change in his manner, and he became morose and moody; he on one occasion called out loudly in his sleep, and when witness went to see what was the matter he found him sleeping heavily; witness had also noticed his pillow wet in the morning with a rusty stain; the prisoner, Wally Barbour, his cousin, and the witness, had, in April last, started for a walk; they had gone but a short distance when the prisoner suddenly attacked him and threw him down; upon asking him what he meant Frank made no answer, did not even look at his questioner, and soon after wanted him to take tea with him; he never made any allusion to his strange conduct and acted as if he was not aware of what he had done; witness was with him on the Sunday previous to the shooting, when he acted as if he was sick; they had made arrangements for an excursion to the woods to procure some flowers; he went part of the way, gathered one or two, and then went home; witness and Wally Barbour continuing; when they returned they found him asleep; the next morning he told them he might go away on Monday.

*Walworth Barbour* testified—Reside at Saratoga; is second cousin to Frank; have known him almost all his life; knew his general character in the neighborhood and among his friends as being very good; never heard a word against him; heard the testimony given by the previous witness, Mr. Pond; it was correct so far as he remembered all the circumstances.

*Mr. Smith*, a resident of Saratoga, testified:—On Sunday the 1st of June, Frank and Mr. Pond called at my place; we talked about various things; finally Frank asked me to let him have some money, that he was going away on the next day and would be back on Tuesday; I told him I had no money with me, but if he came to my store on Monday morning I would give him some; he came on Monday and I gave him \$15; he said he would be home on Tuesday and make it all right with me; the fare from Saratoga to New York is four dollars and a half.

*Augustus Von Belleau*, recalled—When first he knew Frank he was studious and capable, but latterly he seemed not to lose his capacity, but his memory; he learned German with witness, and he spoke it pretty well and wrote it with ease; words that he learned and remembered in his earlier studies he had forgotten, as if he had never learned them; latterly, instead of



his usual cheerful manner, he became gloomy and morose; sometimes it was painful to see him; he would complain of great weariness and be long in bed; his face would flush and suddenly turn pale, and a strange rattle was in his throat.

*Winnifred Roach* was housekeeper for the Walworths in Saratoga; knew Frank well; the morning after he had gone she noticed bad stains on the pillow, blood stains; heard screams from his room during the night; had observed these stains many times before that, during winter and spring, and had heard him scream two or three times before; his appearance was very strange sometimes, very pale and forgetful; he'd travel around the room and around the yard as if he was lost entirely and ready to drop away; he'd come down to relock the doors as late as twelve o'clock; he was the only male in the house except Tracy.

To Mr. Phelps—He would come down at midnight, and unlock and then relock the house; in my room I could tell his movements; sometimes he'd go out; he would do this nearly every night; once in a while he'd go out; sometimes he looked frightened; he'd walk fast; Saturday evening before he left home noticed this.

*Joseph W. Hill*, recalled—Has known Frank for over a year; when he first came to his law office he was studious, but soon observed something that made him believe Frank had something absorbing on his mind; he wouldn't converse as usual, and made no progress in his studies; these habits continued, until he would come to the office and notice nobody, sitting there unoccupied for two hours, and then leaving; he complained of being languid and sick.

*Dorothy Smith* (colored)—Had been servant of the family all her life; knew Frank since he was born; when he was seven or eight years old he fell from a car and was hurt back of his head; it was bleeding; last summer his pillows where he had slept over night were stained a kind of brownish yellow; seen them three different times; used to hear him scream in his sleep; in 1862 he laid for two days with a sort of headache, and then had convulsions, frothing at the mouth; had been fishing, and thought it might be the sun; the day before the Southern tournament in Saratoga, in August, he was sick again, and I found him in convulsions; I bathed him in warm water; don't know if it was the effect of the sun.

*Thomas W. Todd*, said—I reside at Syracuse; I knew the prisoner in 1870; he was playing a game at ball; Frank became insensible for half an hour, but no one else did; the next day he was languid; he hurt his nose and his forehead.

*John L. Barbour* said he had known Mansfield Tracy Walworth; in 1861 or 1862 I saw him put on a Confederate uniform, and he said that he held a commission in the Confederate army; this was at the time Walworth was in Washington; I told the Secretary of State, and on subsequent inquiry I found that the story was not true; I think he said he was a captain in the army; he told me at the time he was in the employ of Colonel Stuart; I know Frank Walworth; I have observed that he has appeared very moody and occupied; I have frequently met him on the sidewalk and he has never noticed me; I have noticed that his face was peculiarly pale and there were twitchings of his face.

*Dr. Charles S. Grant* testified—I reside at Saratoga Springs; am a physician and surgeon; had known the prisoner for several years, and his character generally was good.

By Ex-Judge Garvin—During the years you have known Frank Walworth have you noticed any change in him?

Witness—I noticed a decided change in him six or seven months ago; he came to my office in the afternoon; he was in the habit of coming there once or twice a week to play billiards; I asked him to go up-stairs; we went up and sat by the window; he looked out and looked up; I said to him, "Have you tired yourself out so quickly?" he made no reply; I took off my coat and took up my cue; he went to the table and put the white balls where the red balls should go; just before striking the red balls he noticed his mistake and said that was not the way to begin a game; he then placed his balls properly and played half an hour or so; I noticed that he had a peculiar appearance for a day or two afterwards; the second time I noticed any peculiarity was when he called one evening and we played; I said to him it was his turn to play; he made no remark, and I said to him again, "Frank, it is your turn to play;" he spoke in a sharp unnatural voice and said, "He was ready;" he sprang up from his seat and struck the balls with great force; the stroke counted, but instead of playing the ball again he struck one of the red balls so hard that it dropped on the floor, and almost instantly he dropped into

the chair; his face twitched violently; he was breathing very heavily and was snoring; I sat by his side and said, "Frank, what ails you?" he made no reply, but made an effort to open his eyes; I think he raised his head and repeated my question in a listless voice; after three or four seconds he put on his coat; I asked him where he was going; he said he was going home; he also said it was near six o'clock and he promised to be home at six; I asked him if he would not stay and finish the game; he said, "No, he had to be home at six o'clock;" at the same time he began to take off his coat; this was about five or six o'clock; I did not notice any decided symptoms of change until five or six weeks ago; he got into a carriage to ride with me; we were talking about typhoid fever; after several minutes had passed and he did not make any remark, I looked at him and saw he was staring right ahead, and his face was livid; I said to him, "Frank, are you sick?" he did not say anything, but continued to stare; I then put my hand on his shoulder and said, "Frank, are you sick?" he did not say anything, but continued to stare; he then gave me a wild look and said, "How far is it to the springs?" I then said to him, "Frank, what is it you complain of?" he then repeated, again and again, the word "fruit," "fruit;" his arm was very rigid and his muscle relaxed; he said, "Did you think I was going to faint?" I said, "You acted so strangely I did not know what to think of it;" I asked him what he meant when he was going to strike me; he put his hand up to his head and said he could not conceive any reason why he should strike me.

Q. Will you please state in a general way what these things indicate? A. To my mind they indicate epilepsy.

C. How does the condition called epilepsy affect the mind?

A. It produces unconsciousness and mental irresponsibility.

Q. What is called epileptic mania? A. Yes.

Q. Under the influence of epileptic mania is there consciousness or will? A. Not when fully under the influence of the mania.

To District Attorney Phelps—Have had between thirty and forty cases of epilepsy under my charge. Was stationed in the Albany Insane Asylum at one time, and had many cases there.

The court then adjourned.

After the opening of the court on Tuesday morning, the first witness called was

*Dr. John B. Gray*, who testified—I have resided at Utica since 1850; have been a physician for twenty-five years, connected with the New York State Lunatic Asylum; am familiar with the epileptic condition; it is a disease of the brain and spinal cord, manifested by periods of unconsciousness and spasms; its causes are various; constitutional or hereditary, falls and blows, a shock, mental or physical, long continued distress, and generally things calculated to disturb the circulation.

Q. To come down to our case, "Is epilepsy always accompanied by spasms?" A. Yes, but not such as are evident; a spasm may occur perceptible to a person having his hand on a patient so that he perceives the tremor, while to any one else it would be imperceptible; a condition of rigidity, often preceded by a cry, is the first symptom; there is pallor, followed by redness of the face, a swelling of the chest, and after that the patient usually falls into a sleep; that is rather the spinal form; an apparently milder form involves the brain, and the symptom is only a slight shiver; either form, with more or less speed, impairs the whole mental power; the progress of the disease is manifested sometimes by a lassitude of mind; sometimes by irascibility; its most marked symptom is a change in some direction; sometimes it manifests itself by sudden maniacal raving, more than attends other forms of insanity; sometimes by mere bewilderment and hesitation; the mind becomes impaired and the will with it; the will is practically in subjection.

Q. Take the case of a man who screams out in his sleep, and a little while after is found snoring, and at times froths at the mouth, what would you say of it? A. I would say that it indicated an epileptic seizure; other symptoms that may occur are spots on the surface, indicating extravasation of blood; the dangerous period is not during the rigidity, but before or after; the effect of waking up a person subject to epilepsy two or three hours before his usual hour would be likely to bring on a fit; in fact, nocturnal epilepsy is apt to come on a little while before the waking hour; epileptic diseases might well exist without friends recognizing them.

The witness here gave details of general cases, and then said, in answer to questions by Mr. Phelps:

The leading symptoms in this case denoting mental impairment are the facts of his failure as a law student and his forgetfulness of German phrases which he had before familiarly used; the physical symptoms are inconsistent with hysteria; I did not say that the shooting of the father occurred during an epileptic attack; I said that he was liable at any moment to such an attack; epileptic attacks are, so far as we can see, unpremeditated and causeless; in some cases, where epilepsy seizures occur but once or twice in a life-time, especially after maturity, there is no notable change in the general mental condition, but as a rule there is a change; where the attacks are at intervals the patient is usually capable, in the intervals, of carrying on his ordinary business, but there is ordinarily gradual deterioration, ending in dementia; in some cases there are no symptoms preceding an epileptic seizure; but sometimes there is headache, restlessness or constipation, and in rare instances a precedent maniacal outbreak; in cases of *petit mal*, the apparently milder form, which is very brief, passing off in a few seconds, there is often drowsiness, bewilderment or wildness; they do not remember what occurs during the seizure, but sometimes have an indistinct memory of what occurred during the later epileptic stage; I have known cases where the memory of a number of days was cut out, though I have supposed they were, during that period, cognizant of their acts.

Mr. Phelps here detailed the statement of the prisoner after the shooting, as to the affair, and asked whether the recollection of the events by the prisoner would affect the doctor's judgment as to the prisoner's epileptic condition. The doctor stated that the recollection of the events would not alter the doctor's opinion as to the prisoner's epileptic condition, but added that there was hardly sufficient data from his statements as given to decide whether he had that morning an epileptic seizure.

To a Juror—These attacks cover a period of time, though within the period or circle of the attack minor attacks may occur.

To the Court—The disease is not exactly periodical; it is rarely curable; in cases of simple convulsive epilepsy the physical condition sometimes is perfect.

To Mr. Phelps—I have known persons with epilepsy who still conducted with ability the ordinary business of life; Cæsar and Mahomet are said to have been epileptics, and Napoleon, Alexander and some other distinguished men are said to have had epileptic attacks; the rule is, however, that mental degradation sets in; it is the cerebral epilepsy, or *petit mal*, which I consider the most liable to become incurable; there is a certain periodisity in the recurrence of the attack, but an exciting cause may bring it on at any time; as a rule, the epileptic rage is directed to all alike, but I have known cases where it was directed at a particular individual.

Dr. Gray was examined by Mr. Beach, and testified further:—I spoke of an attack lasting two or three days; the fit I meant would only last a very brief time, but the epileptic condition might remain a longer time, during which he would seem to be in a rational condition, yet really his mind is wholly under the epileptic influence; he may do certain things in an apparently rational manner, yet the epileptic condition, with its violent tendencies, continues; ordinarily the fit is terminated by healthy normal sleep; some of the books state epileptic attacks which were accompanied by distinct memory of what occurred in them; in my own practice I have found some who could remember, but could not determine whether they spoke from memory or from the information of others.

The defence here closed.

The prosecution called, in rebuttal,

*Francis S. Street*, of the *New York Weekly*, who testified that deceased was well known to him for a year; he was writing for that paper; he was very affable, agreeable, courteous and cheerful; he was very quiet and gentlemanly; I never saw any violence or eccentricity; I knew he had a family; he never alluded to it but on one occasion; I showed him an article in the *Tribune* complimenting his wife's readings at Saratoga; he smiled and was pleased, and asked me to give him the article; I never saw on him any sign of liquor; I never heard him use profane oaths.

To Mr. O'Connor—I saw him in all at our office from twelve to twenty times; he came to our paper to offer his productions; we paid him for one serial during the year \$1,000; we were arranging with him for a second; he was to come

down on that Tuesday to arrange terms ; he was always neatly and properly dressed ; he looked like a quiet gentleman, and not a hungry author ; I published some placards containing this—"Let Tracy Walworth speak for himself ;" they were pasted up so that people could read them ; I believe we published an editorial denying the truth of the stories against him.

*John Lary*, a restaurant keeper, testified that Mr. Walworth for two or three years got his meals there ; he spoke with pride of his father ; he never swore ; he never drank but once at the witness's bar ; he was always gentlemanly ; he was generally cheerful ; witness heard from another party that he was a married man ; witness never saw him show a pistol or be engaged in a quarrel ; he generally took three meals a day at witness' restaurant.

*Henry Ackerman*, a barber, testified that he had known Mr. Walworth four years ; he was commonly shaved by witness, and when witness became sick he came and inquired for him and brought him grapes and fruits ; he was a gentleman from the top to the foot ; he never got angry ; witness taught him German ; he never was profane ; he belonged to their singing society, and was a pretty regular attendant ; I saw he had some kind of feeling in his heart, but I was ashamed to ask him ; I never saw him have any drink except maybe a glass of lager beer, as any gentleman might ; I never saw him intoxicated ; I never saw him have a pistol ; our society was the New York Mænnerchor ; I saw him last at eleven o'clock on Monday night, before he was shot.

*Herrman Bettgeman*, grocer, testified that the deceased visited his store once or twice a week for the last two years ; his demeanor was not cheerful, but quiet, not violent ; he never heard him utter violent oaths ; never saw anything odd about him.

To Mr. O'Connor—He came to me for groceries, butter, eggs, cheese, cigars and sometimes a bottle or two of wine ; once or twice a bottle of brandy ; sometimes he took them away, sometimes we sent them ; I suppose he bought other groceries ; he kept a monthly account, which he paid promptly at the end of the month ; it ran from \$8 to \$17 a month ; when his family lived there it ran from \$70 to \$90.

*Theodore Ramer*, Superintendent of Station H, of the Post

Office, testified that he knew Mr. Walworth, and his manner was always that of a high-bred gentleman ; he was cheerful and inclined to talk ; the only one of his family he ever mentioned was his father.

The District Attorney offered in evidence Mr. Walworth's book, "Beverley."

Mr. Beach objected to it as incompetent.

Mr. Phelps said he offered it to show the sanity of the deceased.

Mr. O'Connor said the substance of these letters was contained in this book.

Mr. Justice Davis—Yes, he had followed these letters substantially in the book, except the blasphemy and obscenity.

The book was excluded.

*Dr. Ralph L. Parsons*, physician for many years in the New York City Lunatic Asylum, testified :—Epilepsy is characterized by loss of consciousness ; it is usually a convulsive affection, and is sometimes connected with a change of mental condition ; it frequently exists without such mental disturbance as to amount to insanity ; I am inclined to think it is almost always accompanied with a certain degree of irritability ; the paroxysms have a sort of periodicity, varying within certain limits for each individual and varying with each individual ; there is a portion of the epileptic attack of which the patient is wholly unconscious, but there is a condition of epileptic mania of which frequently the patient has some memory.

Mr. Phelps here presented a hypothetical question, stating the facts of the separation of the prisoner's father and mother, his care of his mother, his receipt of his father's letters, the last letter received, the offer to go to Europe, the prisoner's letter to his uncle announcing his intention to see his father, the arrangements of Sunday, the visit to New York and the circumstances connected with it ; the occurrences on Tuesday morning as detailed by the evidence, including the prisoner's subsequent acts, and asked—From them what is your opinion as to the condition of the prisoner's mind and whether he was conscious of the character of the act he was doing? A. I see no reason from the whole question as put, to induce me to believe that he was laboring under an attack of epileptic mania ; knowledge that he had previously shown epileptic symptoms



would not change my view ; I should require further evidence of the character of the act itself.

To Mr. Beach—If I knew that the man was epileptic I should be more careful to inquire into the evidences of aberration of mind at the time ; from the evidence as given I should not conclude that the act was epileptic or one of epileptic mania ; assuming that he had an attack of epilepsy on Sunday, he might have renewed attacks on Monday and Tuesday ; I have seen cases of epilepsy where I saw no evidence of excitement or irritability ; I believe no case occurs without some effect on the mind after the paroxysm has passed ; strong continued emotion may produce epilepsy where there is some predisposition, not otherwise ; I cannot tell in what that predisposition consists, but a hereditary tendency often confirms us in our view of predisposition ; I give a considerable degree of significance to the prisoner's statement, as evincing a memory of the transaction ; his statement of the shooting showed he was conscious of the shooting.

*Dr. Abner Otis Kellogg* was next called and testified—I am at present connected with the Hudson River State Lunatic Hospital at Poughkeepsie, but before that was at the State Lunatic Asylum at Utica ; I heard the question put to Dr. Parsons ; there is no evidence in it to convince me that at the immediate time of the homicide he was in an epileptic condition ; epileptics may be conscious or unconscious ; there is a mental deterioration generally going on gradually and leading ultimately to an entire failure of mind.

*Dr. Meredith Clymer* defined epilepsy as a nervous disorder characterized by loss of consciousness and convulsive movements of the muscles ; there were three varieties of it, which he described at some length with their symptoms ; irritability of temper commonly preceded or succeeded the fits—perverse-ness, a tendency to explosive anger, a change of temper ; one or more of these was common ; a person might be subject to epileptic attacks without being subject to epileptic mania or insanity ; epileptic mania is simply mania arising in an epileptic ; he may have his mind disordered without being maniacal.

Dr. Clymer further said that he saw nothing in the hypothetical question of the District Attorney that would make him think the accused was or was not epileptic at the time of the

shooting ; he had no data to go by ; there was nothing in the evidence that would induce him to believe that he was in an epileptic condition at the time ; he knew of cases when the patient's memory was clear as to the circumstances of his attack.

This concluded all the evidence in the case, and Mr. O'Connor commenced his address to the jury for the defence. At the conclusion of his eloquent appeal Judge Davis cautioned the jury not to speak of this matter among themselves. He was in doubt as to whether he should allow them to separate ; but counsel on both sides had confidence in their integrity, and would allow them now to separate. He hoped they would not read the papers, and said the press had departed from the plain dictates of common decency in commenting on this case.

The Court then adjourned.

At the opening of the Court, on Wednesday morning, the prisoner took his place, accompanied, as usual, by his mother and relatives, and District Attorney Phelps commenced his summing up for the commonwealth. All listened with the deepest attention to the speech of Mr. Phelps, the mother's clear brows sometimes knitting together with anxiety at his denunciation of her son and his argument to show premeditation. The prisoner sat all through the speech with his head bent earnestly forward, his eye steadily turned on the speaker and his lips slightly apart. At the District Attorney's description of the scene in the room of the Sturtevant House, he turned inquiringly towards the jurors, as if to invite by his appealing look the mercy which the District Attorney was warning them against. At the conclusion of Mr. Phelps' address, Mr. O'Connor requested the Court to charge as follows :

That under the evidence the prisoner cannot be found guilty unless there was in his mind a deliberate and premeditated purpose to kill, not a mere intent.

That the law requires a deliberate determination to kill in cold blood, and not a mere sudden passion.

That the facts do not show a deliberation or intention.

That if the prisoner knew deceased to be a desperate man it militated against the theory of murder in the first degree.

That if he acted under terror he was not guilty of murder in the second degree.

That if the jury were not satisfied that the death occurred by a shot, of which the prisoner was conscious, that they could not convict him of murder.

That if they found he was unconscious of any one shot there was no discriminating evidence to show which shot was the fatal one, and they must acquit.

That if at the time he was in a state of insanity, produced by epilepsy or mania or any other cause, he was not responsible.

That if at the time of the shooting he was in a state of overwhelming terror, in which neither he nor any other person could have exercised choice or will, then he must be acquitted.

The Court then ordered a recess of thirty-five minutes, after which the Judge, at about half-past one o'clock, commenced his charge to the jury, concluding it at about half-past four o'clock.

Judge Davis commenced his charge by describing the character of the indictment against the prisoner, which he said was for a crime long defined by statute, but on the 29th of May the Legislature passed a law altering in material aspects the definition of the crime. This was the first trial under the new law, and the Court had been called on to construe it. Prior to it, it was well settled that where there was a killing with a well-defined intent to kill, though that intent arose at the instant of the act, the language of the old statute was:—"Such killing \* \* \* shall be murder in the first degree \* \* \* when perpetrated from a premeditated design to effect the death of the person killed, or of any human being." The new statute, materially different, reads, "when perpetrated from a deliberate and premeditated design," &c. The elementary books speak of intentional murder as deliberate murder and presumed from malice, deliberation and intention. But he thought the intention of the Legislature was not to go back to that view, but might be elucidated by the other provisions of the statute. It transferred what was before murder in the second degree into murder in the first degree, and created a new degree of murder in the second degree, and the draughtsman seemed to have desired to intensify it in the separation of murder in the first degree. It is defined to be "when perpetrated intentionally, but without deliberation or premedita-

tion." Deliberation and premeditation were matters of fact to be decided by a jury and not by the Court ; but in deciding on these facts the jury must use their knowledge of human nature in its varied aspects. In this case the people claimed that the state of facts complying with this statute existed. He should briefly review the facts alleged on either side.

It was claimed that motive, the impulsion to crime, was shown in this case, in that the father's violent and bad conduct towards the prisoner and all his family was so bad as to lead to the contemplation of a crime like this. If the jury could see that such a state of circumstances existed as that the idea of relieving himself by an act of crime was presented, the jury may find there was a motive. The prosecution claimed that through the bad conduct of the deceased, his persistent threats and letters, a state of mind arose in the prisoner looking to the relieving of himself by the death of the deceased, if no other means could be found. Such circumstances have a double aspect, and the people claimed that because this man had abandoned his claims as a father, and had heaped this violence and abuse on his wife and the prisoner, the jury might fairly infer a motive. They went further than that, and showed that subsequent to the offer of a visit to Europe he received the last letter from his father ; that this letter presented an obstacle to his visit to Europe, and that he thereupon meditated some means to relieve himself and his mother from the monstrous attacks of his father. On Sunday it appeared he wrote to his uncle. This letter showed that he had accepted his uncle's offer, but then goes on to say his mother's position is not safe, as it is, and announces his intention to visit his father. From it might fairly be inferred that he had accepted the invitation and this letter had come as an obstacle ; that he had been thinking over means to remove that obstacle and had resolved to see his father to see if that obstacle might not in some way be removed. So much was fairly inferable. Now, the people claimed that he rose next morning looking very pallid, went to his friend, borrowed \$15, and went to New York, and that he prepared himself by taking a loaded pistol. The evidence clearly showed that he went first to his father's house ; that it was on the suggestion of the boarding-house keeper he wrote the note in evidence.

It was claimed by the prosecution that all these were steps

in a deliberate purpose either to shoot his father or obtain a satisfactory settlement of the family difficulties by obtaining a promise not to annoy his mother, or if that were not given, then to destroy him. It was claimed that this was carried out by the coolness of the prisoner, evincing a full knowledge of the nature of the act and its consequences in his sending for a policeman and his statements to the sergeant at the station house. The Judge then read the testimony of the sergeant at length. These declarations, coupled with the previous steps, were, it was claimed, matters which shed light on the intention of the prisoner as set out by the prosecution, especially when coupled with the great wrongs to his mother and family, the threats and dangers to his mother and himself, supposed by him to exist.

On the part of the defence it was shown that the sum he borrowed was just about equal to his fare both ways and one day's expenses ; that he expressed to his friend and to Mr. Ainsdell, and in a message to his mother, his expectation of returning on Tuesday ; that he went to his father's residence direct to make the contemplated arrangement at once with him and return the same night to Saratoga, and that his knowledge of the consequences of the act of the killing of his father was not at all consistent with such deliberation. It was for the jury to decide which of the two things they were to believe. Nevertheless they must remember that it was unnatural to announce such a purpose as the prosecution claimed, nor were these declaration wholly inconsistent with the alternative purpose alleged by the prosecution, and of which he might hope to effect the milder alternative. Nevertheless, if there were any reasonable doubt on the question the prisoner was entitled to it. The prosecution were bound to make out the fact of deliberation and premeditation beyond reasonable doubt, but if they were satisfied either of the positive intent to kill or of the alternative resolution to kill if the father did not make a satisfactory arrangement, the fact was made out within the definition of murder in the first degree.

This brought him to the consideration of murder in the second degree. This, under the statute, was a killing with intention, but without deliberation or premeditation. It might be a swift intent, formed on the spur of the moment. Formerly this was murder in the first degree. It required no

premeditation at Saratoga, no deliberate setting out to kill the father, but merely that, if when they, met something sudden occurring in his father's manner of action roused up a hasty, sudden, instantaneous determination to kill. Whatever the deceased's appearance toward the world, his character, as shown by the evidence before them, toward his wife and children was despicable beyond description. According to the evidence, he said, for they could not have the deceased before them to explain the letters, if they were capable of explanation.

The public should be careful to remember, said Judge Davis, what they are very prone to forget, and it is what the general public are very apt to do, that in the eye of the law all men, without respect to their condition of character, bad devices, or their moral or physical nature, are under the protection of the law. The same shield that is over the bad is over you, and each of you ; stands by your bedside at night and in all your domestic relations ; in those, too, who are purest in their lives. The genius of the law protects every person, however humble he may be. It is a wild and foolish notion that a man may be called to have his grave laid open to show up his character and his pursuits in life, for the purpose of creating a public sentiment that he was so bad a man that he ought to die. I say that this wild notion of justice has no approval in the administration of either truth or law. It is proper and just for you to discard from the consideration of this case the notion that Walworth was not fit to live. The Judge who is to determine this does not sit in this Court nor in this jury box. He determines this question by that which you and I do not possess—an infinite knowledge and an omniscience that reads every soul and finds truth wherever it is. The law upon this subject has been well expressed by Chief Justice Davies. (This opinion was read by the judge.)

The evidence in the case for the defence might be specified as of a twofold character. First—That the prisoner at the time of the alleged crime was outside of the law, because he was insane. Second—That the act of shooting his father was prompted by self-defence. That, with the exception of the one just alluded to, as to the character of the father, which was no law, covered the points of the defence. Taking the second first :—As to self-defence, its right is a natural one

and recognized by law within certain limits. This was claimed to be justifiable homicide under our statute. The statute recognizes excusable or justifiable homicide, four grades of manslaughter and two of murder. It does not recognize distinctly parricide or matricide. The crime is one likely to produce horror, but the law only recognizes it as homicide. The Judge then defined justifiable homicide, and said that threats against an absent person do not justify such homicide. The only ground on which the threat against his mother could have any weight was as they gave point to his fears for himself. He quoted the *People v. Shorter* as laying down the true rule that the appearances must be of immediate attack, intended and imminent danger. It was for the jury to determine whether these facts existed. If they did, the party was entitled to a verdict of acquittal. In this case they had really nothing as to the real transaction at the time of its occurrence but the statement of the prisoner read before the Coroner. That was this:—I am guilty of no crime. My father treated my mother very cruelly. Incensed against his father, \* \* \* he wrote among other things, ‘I will defeat the — scoundrel in his grave.’ He had just before put his hand up to his breast as if to draw a pistol. I fired. \* \* \* He closed rapidly on me, and had his grasp on me when I fired the last shot.” This was his own statement, and they were to presume that it was as favorable to himself as the truth would permit. (The Court here repeated the incidents of the morning from the time the prisoner was waked to the time that deceased entered.) What occurred in there was not overheard. It was for the jury to fill up this bare skeleton. The evidence tended to show that no pistol was drawn. Nothing was found upon the deceased except a small bunch of keys. There was then no real danger, and nothing done to justify the drawing of a pistol. It was, however, for the jury to consider whether the father did anything to give the prisoner a right to say that the father was about to draw a pistol to shoot. The Judge then explained at length that the prisoner invited his father to meet him, and that very much modified the expectation of danger. The jury had a just right to inquire whether there was strong and satisfactory evidence that the prisoner was placed in such a position as to

take steps to justify death. But that is as far as the rule ought to go.

The letters might be divided into two series—the first of which were written in 1871, and they were addressed to the prisoner's mother. They were all written in the month of July, 1871. They all relate to matters relating to the execution of certain legal papers, although they were all vulgar, dirty things. The jury was to consider what was the purpose in writing them, and also the motives that actuated the use of threats. It was right to say that these threats were in violation of the law, and that the deceased could have been arrested and bound over to keep the peace. The matter complained of in the letters was ultimately settled, and the delay in settling was occasioned by the illness of the prisoner's mother. The next series of letters were in 1872 and contained similar threats. The effect of these letters was very much intensified by their coming before the court in the shape of an avalanche. The real point for the jury to consider was what effect these threats had upon the mind of the prisoner. That was the only point for the jury to consider.

In relation to the degree of insanity set up it must be satisfactorily shown, according to a recent decision of a higher court, that he had not the capacity to understand what he was doing, and did not know when he did it whether it was right or wrong. The Judge amplified on this point and then concluded by a recapitulation of the main points of his charge, and directed the jury to retire to their room.

When the charge was concluded Mr. O'Connor presented a list of requests to charge, which the Judge had passed over, and requested that they be now included in the charge. One was that the prosecution must prove that of the four pistol shots fired, Walworth was killed by the first one fired, and not by the other three, which might have been fired by accident ; but this the judge declined to do.

The jury then retired.

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#### THE VERDICT.

The jury retired to their room at about thirty-five minutes past four o'clock on Wednesday afternoon, July 2, 1873, in



charge of two officials of the court. The Judge, lawyers, and officers of the court generally, left the court house, and numerous speculations were indulged in by the spectators of the trial as to when the jury would return and what the verdict would be.

At about a quarter past eight o'clock, Judge Davis came into court. Directly behind him came the Sheriff's officers, next to them the prisoner, his cheek a little blanched, but his head still erect; behind him the mother, on the arm of the Rev. Clarence A. Walworth, and following them General Hardin and his mother and the remaining relatives. Little Tracy, the young brother, threaded his way cheerily among the taller humanity, clambered over his brother's knee and took his seat beside him.

Then the jurors dropped into their seats, and Assistant District Attorneys Rollins and Lyon appeared in their places. Mr. O'Connor came in and took position at his desk.

"How say you, gentlemen of the jury?" asked Mr. Sparks, the Clerk of the Court, amid a silence that was oppressive. "Have you agreed upon a verdict?"

"We have," replied the faint voice of the foreman.

An almost intense suppression of breathing was noticeable throughout the court room. The prisoner's face blanched and became as white and as rigid as marble. The mother put her hand to her breast and leaned her head intently towards the jury, while over her face, hope, fear, doubt and anguish chased one another in a rush of varying emotion.

"Gentlemen of the jury," continued Mr. Sparks, "stand in your places."

The jury rose up.

"Prisoner, stand up."

The young man rose instantly as erect as a pine, and turned his face rigidly towards the twelve men who held his life in their hands.

"Gentlemen of the jury, look upon the prisoner. Prisoner, look upon the jury. How say you, gentlemen of the jury? Do you find the prisoner, Frank H. Walworth, guilty or not guilty of the crime charged against him?"

Foreman—Guilty in the second degree.

Clerk—of what—of murder?

Foreman—Yes.

Clerk—How say you then? You find the prisoner guilty of murder in the second degree, and not guilty of murder in the first degree?

The foreman nodded his head.

"So say you, all of you?"

The whole twelve nodded their heads.

The prisoner received the blow without a change of countenance, and when, at a nod from the Clerk, the jury sat down, he, too, resumed his seat and listlessly loosened his necktie. His mother turned toward him one look of affection, and as his wearied eye caught hers she turned the look into a smile, to which the prisoner wearily responded. The rest of the relatives sat around, undecided whether the verdict was a triumph or not; and little Tracy, the novelty of these strange proceedings being over, rested his head upon his brother's arm and gave way to sleep.

Mr. O'Connor, after a short consultation with Mrs. Walworth, asked that the sentence be deferred until counsel could file a bill of exceptions. Judge Davis, after some discussion, agreed to give him until Saturday, and adjourned the Court until that day. The prisoner was then taken into the ante-room, and soon afterward was returned to his cell in the Tombs.

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#### THE SENTENCE.

Soon after the assembling of the Court, on Saturday morning, July 5, District Attorney Phelps slowly rose in his seat and addressed the Court as follows:

"The trial of Frank H. Walworth for the murder of Mansfield Tracy Walworth has terminated by a verdict by an impartial jury of murder in the second degree. It is my duty, and I now move that the Court pass sentence upon the prisoner in accordance with the verdict pronounced against him."

"Walworth, arise," said Mr. Sparks, the Clerk, as soon as the District Attorney had taken his seat.

Young Walworth did as bidden, looking Mr. Sparks steadily in the eye.

"What have you to say," continued Mr. Sparks, "why

judgment of the Court should not now be pronounced against you, according to law?"

Walworth brought his left hand, which had been hanging by his side, up to his face, straightened himself back and moved slightly from his position. Not a word, however, came from his lips.

Judge Davis, as if in doubt whether the prisoner intended to say anything, waited fully half a minute, and then proceeded to pass sentence. At times his voice trembled, and once or twice it seemed as though his voice would choke in the depth of his emotion. He spoke as follows :

"Walworth, I have never been called upon in my life to perform a more painful duty than the one which devolves upon me now. After the trial in which you have had the benefit of counsel not surpassed, if equalled, in ability and learning, and of a jury selected substantially by yourself, you have been convicted of the crime of murder in the second degree. The punishment of that crime is fixed by statute. No discretion is left to the Court. It is severe, but as the Court deems your case it is none too severe. It separates you from your friends and your family and consigns you for life to the State prison, from which you probably can have no hope of escape unless, possibly, at some future day, through Executive clemency. The evidence in your case, in my judgment, fully justified the verdict which has been rendered against you, and I have fearful doubts that it would have justified a verdict of murder in the first degree, for I cannot conceive what motive you had in preparing yourself as you did with a pistol loaded, coming to New York, seeking an interview with your father, and almost immediately shooting him down, except upon the idea that you had deliberately determined that his life should be terminated by your hand. I hope, however, that the Searcher of all hearts can perceive from your conduct that you were not animated by that pre-meditation and deliberation which the statute now requires to constitute the crime in the first degree.

"The duty I am to perform is rendered doubly painful by the fact that you belong to a family honored and distinguished both in the civil and military annals of your country. Your grandfather on the one hand was, as has been truly said by your counsel, for a long time the chief equity judge of this

great State, and he left a record for purity and integrity and for all the private virtues that advance and elevate man second to none who have adorned so high a station. And, on the other hand, a grandfather on the mother's side fell nobly fighting for his country on the field of battle, and left a record of which all his descendants may be proud. It is with grief that I feel bound to express my sorrow that the memory of those great and distinguished ancestors should not have restrained you from the commission of such a crime as that of which you are convicted. Your poor mother had, indeed, great cause to regret her relations to the father whom you have slain. You, also, undoubtedly, had great cause to feel not aggrieved merely, but ashamed and indignant at the long course of outrages toward her and toward his family ; but, bad as he was, you were not to be the avenger of these wrongs.

"He had done nothing to forfeit his life, even to the laws of his country, and least of all had he done anything to forfeit his life at the hand of his own and eldest son. When I look back at that moment when you constituted yourself his executioner and slew him in that room with no one present but yourself, I cannot but feel that that death must have been more horrible than a thousand deaths in any other form. Called by you to your presence, apparently for the purposes of a peaceful interview to settle family difficulties ; invited to a seat in your room, and apparently almost instantly confronted with a weapon of death in his own son's hands, what thoughts must have rushed upon him at that moment, when he found that the person whom he had expected had come to him for the purposes of a peaceful arrangement—what terrible thoughts must have rushed upon him when he received the leaden messenger of death in his bosom from the hands of his eldest boy ! I shudder when I think of it, and I think you ought to devote your whole life to a repentance such as God only can accept for so horrible a crime. The sentence of the Court is that you be imprisoned in the State Prison at Sing Sing, at hard labor, for the full term of your natural life."

Throughout the delivery of the sentence the prisoner looked all the while steadily at the Judge. Not a tremor of emotion did he evince from the beginning to the end. It was

the same throughout the circle of his family attendants. There was no show of feeling on the part of any of them.

Everybody looked on astonished. The condemned young man, after the sentence, spoke to his mother, then shook hands with his counsel and some of his friends. Then an officer took him in charge, and conveyed him to his quarters in the Tombs.

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## GEORGE W. COLE.

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HIS FIRST AND SECOND TRIAL FOR THE MURDER OF L. HARRIS HISCOCK.—  
THE EVIDENCE AND SPEECHES IN FULL.—JAMES T. BRADY'S LAST SPEECH  
BEFORE HIS DEATH.—CHARGES OF JUDGES INGRAHAM AND HOGEBOM.  
—COLE'S ACQUITTAL ON THE SECOND TRIAL, AND SUBSEQUENT DEATH.

There were two trials of this famous case. The first was called up on April 20, 1868, in the city of Albany, N. Y. The social and political position, and the wide circle of acquaintances of the interested parties, and of the murdered man in the community where they formerly lived (in the city of Syracuse, N. Y.) was such as is seldom known in the annals of crime.

The murdered man, L. Harris Hiscock, was a lawyer of prominence in the city of Syracuse, and at the time of the homicide, June 4, 1867, a member of the N. Y. State Constitutional Convention, then in session at Albany. The accused, Major-Gen. George W. Cole, was, up to about that time, also a resident of Syracuse.

The cause of the killing of Hiscock, was the seduction by him of the wife of Gen. Cole.

These trials have never been hitherto published. A portion of the second trial (the judge's charge only) appears in the reports. (7 Abbott, N. S. page 321.)

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FIRST TRIAL.—ALBANY, N. Y., OYER AND TERMINER.—BEFORE JUDGE  
DANIEL P. INGRAHAM, AND ASSOCIATE JUSTICES SMITH AND TUTTLE.

The counsel for the people were Hon. Henry Smith (then District Attorney for Albany Co.), Hon. Lyman Tremain.

formerly Attorney General of New York State, and one of the most prominent lawyers at Albany, and Hon. Charles B. Sedgwick, of Syracuse.

The prisoner's counsel were Hon. Amasa J. Parker, formerly judge of the New York Supreme Court, and one of the soundest lawyers in New York State, William J. Hadley of Albany, William A. Beach, of Troy, N. Y., James T. Brady of New York City,\* and David J. Mitchell, of Syracuse.

When the case was called, Mr. Hadley, for the defence, moved that the trial be postponed, and stated that the defence had just learned that a very important witness for the defence was detained at home by illness. The defence had offered to the counsel for the prosecution to have his testimony taken, without requiring his presence ; but as they had not consented to this, it might be necessary for the defence to ask for a postponement of the trial.

Judge Ingraham stated that he had no authority to grant a postponement at this stage of the proceedings, although it might be done by consent.

Mr. Parker read from the Revised Statutes to show that the Court had the authority to grant an order requiring the testimony to be taken. The Court decided that the statute read applied only to civil causes.

Judge Ingraham, in answer to an inquiry by Mr. Parker, replied that he had not the authority to grant the order without the consent of the District Attorney, and then only upon affidavits filed.

The Clerk then proceeded to call the list of talesmen.

Nicholas Winne, resides in the town of Knox ; has formed an opinion from what he has read and heard ; would influence his action as a juror. Set aside.

Hiram Pangburn, resides in New Scotland ; has formed and expressed an opinion ; would require some evidence to change his opinion. Set aside.

C. H. Robinson, resides in Albany ; has formed and expressed an opinion ; would require evidence to change it ; it is so fixed as to influence his action as a juror. Set aside.

Francis Ledding, resides in Bethlehem ; has formed and expressed an opinion ; is not of such a nature as to require some evidence to remove it.

\* This was the last speech made by him before he died.

Cross-examined—Nothing has happened since to change that opinion; would require some evidence to change it.

To the Court—The opinion would not influence his action as a juror; could not discard it entirely from his mind upon the jury. Set aside.

James W. Bender, resides in Bethlehem; has formed and expressed an opinion; would require some evidence to change it; would influence his action as a juror. Set aside.

Owen McCluskey, resides in Albany; has formed an opinion; still retains that opinion; would retain the memory of the transaction in the jury box; some evidence would be required to change that opinion.

Cross-examined—The opinion would not influence his action; could sit in the jury box as impartially as if he had never heard of the case.

To the Court—The opinion would not affect his action as a juror in the least.

Mr. Parker argued that the witness having formed and expressed an opinion, is excluded under the rule.

The Court decided that the witness, having merely formed an opinion from what he had read, and having declared that the opinion would not influence his action in the case, he was a competent juror. He was then peremptorily challenged by the defence and set aside.

Patrick Connelly, resides in Bethlehem; has formed and expressed an opinion; has that opinion still.

Cross-examined—Thinks that opinion would influence his action. Set aside.

Cornelius Vanderzee, resides in Albany; is a photographer; has formed an opinion as to the guilt or innocence of the accused; has that opinion still; would require evidence to change it.

Cross-examined—The opinion would not influence him as a juror; could act unbiased.

Re-direct—If the evidence should be the same as the facts read, his opinion would be already formed; would try to decide according to the evidence, but would begin with the opinion formed.

To the Court—The opinion would not influence him at all after he was sworn as a juror. Challenge overruled by the Court. Excepted to by the defence. The juror was then sworn.

Benjamin M. Secor, resides in Albany; has not formed an opinion as to the guilt or innocence of the accused. Peremptorily challenged and set aside.

John Burns, resides in Bethlehem; has formed an opinion as to the guilt or innocence of the prisoner; has that opinion still; would require some evidence to remove it.

Cross-examined—Has not read or thought much of the case since it happened; the opinion is now so fixed as to influence him as a juror. Set aside.

John Deitz, resides in Berne; is over sixty years old. Set aside.

Lawrence Carey, being an exempt fireman, was excused.

John Hungerford, resides in Knox; has formed an opinion; would require evidence to change it.

Cross-examined—The opinion is founded solely on what he has read and heard of the case; don't think the opinion is so fixed as to influence his action as a juror; thinks he could disregard as a juror what he has read and heard.

Re-direct—Would enter the jury box with an opinion which it would require evidence to change. Set aside.

George Griesman resides in Albany; has formed and expressed an opinion. has that opinion still; would not require evidence to change it if the papers state the truth.

To the Court—Has made up his mind from what he has read; could not try the case without bias. Challenge sustained.

Frederick Slack resides in New Scotland, has formed and expressed an opinion; would require some evidence to change. Set aside.

John Leedins, resides in Bethlehem; has formed and expressed an opinion; has that opinion still; would require evidence to change it.

Cross-examined—Formed the opinion the next day, upon reading the accounts; would affect his judgment. Set aside.

David P. Winne, resides in Bethlehem; has formed an opinion; would require some evidence to change it.

Cross-examined—The opinion is formed on what he read and heard; could decide according to the evidence.

To the Court—Thinks the opinion would somewhat influence him as a juror. Set aside.

James C. Dowsett, resides in Albany, is a boot and shoe



dealer; has formed an opinion; was acquainted with the person killed; would require evidence to remove the opinion.

Cross-examined—Had no other knowledge than what he had read; would influence his action unless the evidence is different from what he has heard. Set aside.

Thomas O'Brien, resides in Albany, is a maltster; has not formed an opinion as to the guilt or innocence of the accused; read the accounts in all the daily papers; has no opinion now; has no impression as to his guilt or innocence; knows Mr. Hadley, and Judge Parker and Mr. Tremain; was summoned by Deputy Sheriff Sigsbee. Peremptorily challenged by the defence.

Hugh McDonald, resides in Albany; is a carriage maker; has formed an opinion as to the guilt or innocence of the accused; thinks it would require evidence to remove that opinion. Set aside.

The panel being exhausted, the sheriff was directed to summon one hundred talesmen from the body of the county, and the Court then adjourned until next day.

The Court opened at ten o'clock. James T. Brady of New York city appeared as one of the counsel for the prisoner. The sheriff made return of the panel of one hundred talesmen directed by the Court to be summoned.

Isaac Strevel, of Bern, was rejected on account of age.

John Gaffney, of Albany, was rejected for like cause.

John Haines, of Albany, has not formed any opinion of the case. Challenge withdrawn by the prisoner. Challenged peremptorily by the people.

Moses Craver, of Albany, has read accounts of the transaction, but has formed no opinion. Challenged peremptorily by the prisoner.

John Walker, of Albany, formed an opinion at the time of the occurrence, but thinks he can try the case impartially. Sworn as the sixth juror.

John McKenna, of Albany, said that he had formed an opinion, and that was that the prisoner was guilty. But that opinion would not influence his action as a juror. Challenge sustained and juror rejected.

John McGann, of Albany, has formed and expressed an opinion. Set aside.

Patrick Kelly, of Albany, has a prejudice. Set aside.

Thomas F. Quinn, of Albany, has not formed any opinion. Sworn as a juror.

Charles H. Benton, of Albany, has entertained and expressed an opinion. Rejected.

Isaac Bulger, of Kenwood, rejected for like reason.

Frederick Andes, of Bethlehem, has read the newspaper accounts, but has no opinion. Challenged peremptorily by the prisoner.

George W. Coonley, of Bethlehem, has an opinion. Rejected.

Charles A. Dennison, of Bethlehem, has an opinion, but not such, in his judgment, as would influence his action. The Court held him to be indifferent. Peremptorily challenged by the prisoner.

K. V. R. Lansingh, jr., of Albany, has an opinion. Rejected.

Shubel Chamberlain, of Bethlehem, has heard and read but little of the case. Challenged peremptorily by the prisoner.

Alexander Robertson, of Albany, has formed a very decided opinion of the case. Set aside.

William P. Haswell, of Bethlehem, has read the account, but has no opinion. Challenged peremptorily by the prisoner.

George Mosier, of Bethlehem, had an opinion, but don't know that it would influence him. Challenge sustained and juror rejected.

Henry Westfall, of Bethlehem, has a fixed opinion. Set aside.

Wm. H. Waggoner, of Coeymans, rejected for like cause.

Thomas Bedell, of Coeymans, reads no newspaper but the Rural New Yorker, and has no opinion. Challenged peremptorily by the prisoner.

Ephraim A. Frink, of Bethlehem, rejected for having an opinion.

Richard Crebel, of Bethlehem, stated that he had formed an opinion, but thought he could act impartially. Sworn as a juror by consent of both parties.

Isaac Bussey, of Bethlehem, has read the account in the Evening Journal, and has acquired an opinion, and fears it would influence him, but would try to decide impartially. Challenge withdrawn and sworn as a juror.

Robert Lasher, of Bethlehem, has no fixed opinion. Challenged peremptorily by the prisoner.

Abram Walker, of Bethlehem, has acquired a pretty decided conviction. Set aside.

Joseph Haswell, set aside on account of age.

Frederick C. Becker, of Bethlehem, read the account in the Argus. Has a fixed opinion. Rejected.

Isaac Van Allen, of Bethlehem, has an opinion, and such as would influence him. Rejected.

William E. Houghtaling, of Bethlehem, got an opinion from his newspaper. Set aside.

John J. Long, of Bethlehem, five miles from the city, takes no newspaper but one religious weekly. Has acquired no opinion of the case. Sworn as a juror.

David Van Dyck, of New Scotland, has a family; is not a subscriber to any newspaper, but buys them occasionally when he comes to the city and gets some of his friends. Has a decided opinion of the case. Does not want to sit on this jury. Has an opinion now. Rejected.

Peter V. W. Brooks, of Bethlehem. Has read the accounts in about all the city newspapers, and from that has acquired an opinion. Set aside.

Michael Cassidy, of Albany, was challenged by the People. Has come to a conclusion that he don't think will be altered. Set aside.

Edwin Gaylor, of Albany, has an opinion. Set aside.

David Friedlander, of Albany, has partly formed an opinion. Challenge withdrawn by prisoner and sworn as a juror.

Martin Fitzgerald, of Albany, rejected for having an opinion.

Joseph O'Callahan, of Albany, rejected for like cause.

Charles Stern, of Albany, over legal age.

Harry Tibbitts, of Albany, rejected for having an opinion.

Jacob Cohn, of Albany, like result for like reason.

William Kelly, of Albany, rejected for like cause.

Timothy Collins, of Albany, has an opinion that he thinks no evidence will change. Rejected.

Patrick Murphy, of Albany. Decided opinion. Set aside.

Dwight Batchelder, of Albany, over age.

John Long, of Albany, has an opinion. Rejected.

Patrick Brady, of Albany, rejected for like cause.

James O'Brian, of Albany, has no opinion. Challenged peremptorily by the People.

Henry Blatner, of Albany, read the account in the Evening Journal and other papers. Has an opinion hard to be removed. Challenge sustained.

Charles Miller, of Albany, has pretty decided opinion, obtained from the newspapers. Set aside.

Robert Maher, of Albany, has made up his mind. Rejected.

Thomas D. Owen, of Albany, has a belief on the subject. Rejected.

John J. Franklin, of Albany, had an opinion, but had changed it. Is now prejudiced in favor of the prisoner as he, the juror, now sits. Rejected.

Stephens L. Hodgkins, of Albany, excused as an exempt fireman.

Michael F. Prout, of Albany, has a decided opinion. Set aside.

Thomas O'Connor, of Albany, got an opinion from the newspapers, that he thinks would affect his judgment. Set aside.

Harold McManus, of Albany, acquired an opinion at the time, and "is of the same opinion still." But he don't think but that he could sit impartially and without being influenced by his opinion. Challenged peremptorily by the prisoner.

Charles Westheimer, of Albany. Set aside for having an opinion.

Robert Thompson, of Albany. Over age.

William H. Rice, of Albany. Reads the Express, Argus, New York Times and Evening Journal at the several periods of the day when they are issued. Has formed an opinion. Challenged peremptorily by the prisoner.

George Martin, of Albany, has an opinion that he don't think he could set aside, for he does not believe in capital punishment. Rejected.

Henry Luke, of Albany, had an opinion. Rejected.

Simon Fisher, of Albany, rejected for like cause.

James Rice, of Albany, had a strong opinion. Knows it would interfere with his action. Rejected.

William Glendenning, of Albany, had formed an opinion. Set aside.

Peter Lyon, of Albany, has an opinion. Rejected.

William Davenport, of Albany, has an opinion, but would not let it interfere with his judgment. Challenged peremptorily by the People.

James C. Jones, of Albany, rejected for having an opinion.  
Frieze De Groot, of Albany, same as last.

Charles Baker, of Albany, same as the last.

John Niblock, of Albany, excused, exempt fireman.

John Pemberton, of Albany, has heard and read of the case, but formed no opinion. Was sworn as the twelfth juror.

The jury, as thus constituted, consists of the following persons, viz.:

|                                |                            |
|--------------------------------|----------------------------|
| John Becker, Guilderland.      | Thomas F. Quinn, Albany.   |
| Michael H. Kennedy, Albany.    | Richard Creble, Bethlehem. |
| John Patterson, Bethlehem.     | Isaac Bassey, Bethlehem.   |
| Joseph Brand, Rensselaerville. | John J. Long, Bethlehem.   |
| Cornelius Van Derzee, Albany.  | David Friedlander, Albany. |
| John Walker, Albany.           | John Pemberton, Albany.    |

Mr. Parker made an application for the examination of Patrick McNiven, of the City of New York, *de bene esse*, at his residence, and upon the ground of his being too sick to personally attend the Court.

Mr. Tremain opposed the motion to grant an order to take the testimony of Patrick McNiven *de bene esse* in the City of New York. He urged that the application should have been made before the trial, and that sufficient time should have been allowed to permit the attorney to attend. There was not sufficient evidence that the witness was too ill to appear at present. He did not know but there might be collusion in the case.

Mr. Parker briefly argued in favor of the motion.

Mr. Brady replied to the insinuation of Mr. Tremain that there had been any collusion in the case. He considered the remark uncalled for, especially in view of the fact that the witness had been subpoenaed by both sides. He was willing that both parties might unite in a telegraph to the Chief of Police, of New York, to ascertain the present state of the witness.

The Court said the proceeding was authorized by the statute, and he saw no objection, in view of the facts alleged, to granting the order.

District Attorney Smith then opened the case on behalf of the people. He said that the Grand Jury of this county, at the last June term of the Court of Sessions, presented an indictment against George W. Cole, charging him with the crime of murder, in having, on the 4th of June last, in this city, by the use of a loaded pistol, intentionally killed L. Harris Hiscock. At the next term after that, when a court was sitting that had jurisdiction of the case, this defendant was arraigned and pleaded not guilty. The trial of the cause had been postponed until this adjourned term of the Court of Oyer and Terminer, which had been appointed to try it.

The duty will devolve on the Court to determine and apply the rules of law applicable to the case. The duty devolves on the jury to ascertain the facts—to decide whether it is true that the defendant did intentionally kill Mr. Hiscock. That duty is a solemn one, because it involves the life of this defendant. It is one of great responsibility because it involves the safety of every citizen. But while this duty was thus solemn and responsible, the jury could congratulate themselves that it is a duty not difficult to discharge, but could easily be performed to the satisfaction of their consciences. There is but the simple question of fact to be determined by the same rules that guide and control the judgment in other affairs. He knew, as cases grow in magnitude, from trivial offences to the crime of murder, that there was an inclination natural in the human mind, to treat it as if it should be tried by some new rules. But the jury are to act upon their convictions, and when they have thus acted their duty will be performed, and it will remain for other officers of the law to deal with the defendant, according to the verdict, as the law shall make it proper to do.

The District Attorney said he would best discharge his duty by laying the facts of the case before the jury, so far as essential for their understanding. He would not refer to the history or previous career of the parties. This had nothing to do with the case. Whoever they may be, however humble or powerful, they are alike amenable to the same law and subject to the same penalties.

Murder is the greatest crime known to our laws. One who has deliberately murdered another has forfeited his life. But the law does not allow any citizen to execute its decrees.

Every man, charged with crime, is entitled to be heard, whether he is guilty or not. The law does not allow any man, or set of men, however sure they may be that a person charged with crime is guilty, to execute its penalties. If you should see a man cut down another in the street, and see the blood run from his wounds, you have no right to punish the offender; and if you should kill him you would yourselves be guilty of murder. So with the smallest offence, the party must be adjudged guilty before being punished. Another reason why this is not tolerated; if punishment should be inflicted in this way, and it proves to have been unjust, the party injured, or his friends if he should be killed, would retaliate. So a disregard of these rules of law, and a resort to force and the gratification of revenge, each in his own right, would bring us back to anarchy.

It is immaterial what the previous history of these parties may be; the question is, did the defendant deliberately take the life of Mr. Hiscock.

Both parties resided in Syracuse. Early last June a Convention met in this city to form a State Constitution. Mr. Hiscock had been chosen a delegate to that Convention from an interior county, and came to this city on the 4th day of June. On the evening of that day, he was standing in the reception room of Stanwix Hall, having just come down from tea, or from his room, and was leaning against a pillar, with his face towards Broadway. Two gentlemen were talking with him. This was between seven and eight o'clock in the evening. The weather was warm and pleasant; the front doors were open; the stoop occupied by persons sitting there, and the gas lighted. While he was standing there, the defendant, Cole, coming in from the Maiden Lane door, entered the rear part of this public room, advancing with a pretty rapid step; and when he got near enough, holding his Derringer pistol almost against the ear of his victim, discharged it into his face and head, producing death. Although he owned another pistol (which the District Attorney produced) he had provided himself with this weapon, which is more certain to produce death; he had them when he entered, ready to do his murderous work. And there he went, sneaking up behind this man, in a cowardly manner, not even giving his victim notice who was his executioner, and sent him into the

presence of his Maker. If there was aught between them, in which the deceased had wronged this man, he never gave him the poor satisfaction of knowing by whose hand he died.

The defendant was arrested, and when he reached the station-house, this other weapon (a knife) was found upon him.

The District Attorney said he had confined his remarks to what he regarded as legitimate testimony, bearing on the fact whether the prisoner, when he blew out the brains of the deceased, and prostrated him upon the floor, intended to take his life. It may be pretended that this man acted with a cruelty so shocking that it indicates his mind was wrong. That is very likely. The right-minded do not act thus. But the law does not release a man who chooses to dethrone his reason, but makes him answerable for his crimes.

After impressing upon the jury the vast importance of this case, as involving the safety of society, the District Attorney closed his remarks.

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#### EXAMINATION OF WITNESSES.

The first witness called for the people was :

*James H. Armsby*, who, being sworn, testified as follows : I have been a practising physician and surgeon in this city for 34 years ; was not acquainted with L. H. Hiscock ; in June last was called to visit a person at Stanwix Hall, said to be L. H. Hiscock ; it was the 4th of June ; about 8 P.M., found him in one of the rooms up-stairs ; he was lying on a bed or a stretcher apparently dead ; there was a wound under the right eye ; one or two other physicians were present ; I examined him ; he was dead ; I passed a silver probe into the wound under the eye ; it passed backward and upward nearly the whole length into the posterior part of the brain ; rather obliquely ; must have crushed through the base of the skull ; probably severed the spinal marrow ; did not feel the ball ; think it lodged in the posterior lobe of the brain ; the wound on the face was a small circular wound, just below the right eye, say half or three-quarters of an inch ; it was the cause of his death without doubt.

Cross-examined—Reached Stanwix Hall somewhere about



8; room was on the second or third floor; think a rear room; now remember the direction of the ball; examined to ascertain the depth of the wound; Dr. Havens was present; understood others had seen him; was there a few minutes; the ball seemed to enter below the right eye; its course upward and slightly to the left; think the ball lodged against the back wall of the skull; thought it must have crushed through the base of the skull; if ball had passed through the skull, it would have come out a little to the left of the mesial line; did not see the prisoner that night; saw no other wound on the deceased; there was no post mortem, as I am aware of; the party who fired the shot must have stood nearly in front.

Re-direct.—Q. With a weapon of that size, would the course of the wound indicate the position of the party firing it? Objected to. Objection sustained.

*John H. Mann* sworn: Reside in Syracuse; resided there in June last; am a merchant; keep a grocery store, and another where I sell fire-arms, &c.; did not know the defendant at that time; since ascertained his identity; 3d of June last, in the forenoon he bought a pistol of me; he came into my store and asked what kind of pistols and revolvers I had; he chose a small breach-loading Derringer; can't say whether weapon produced was the same; was one of that make and size; paid me six dollars for it; also took five or ten cartridges; asked me whether the cartridges were reliable, and said some of them were not worth a picayune; I furnished them; they are 41-100 calibre; think I furnished him from five to ten; this was on the Monday morning, as I heard of the killing on Wednesday.

Cross-examined—Have lived in Syracuse 19 years; did not know Gen. Cole; came to my store about 10 or 11 o'clock; my store is a public place opposite Syracuse House; there were none in the sporting store at the time; defendant was not there more than ten minutes; he came in alone; the cartridges are metallic, containing powder and ball; do not remember how Gen. Cole was dressed; did not state he was a detective of the customs; did not state his business; a party came in the grocery as Cole was passing out; it was Jas. Manning; did not see which way he went on leaving.

*James Carlisle* sworn: Was an officer of Capitol Police in June last; remember the killing of Hiscock; arrested the de-

fendant; weapons were found on his person; (pistol produced) don't know whether this is the one; Mr. Summers had the weapon and handed it to Sergeant Atkins; (another pistol produced) had this in his right hand coat pocket; (knife produced) think I took this out of his vest pocket; it was about 15 or 20 minutes after the shooting.

Cross-examined—First saw prisoner in Stanwix Hall reception rooms; accompanied him to the station house; made no attempt to escape; submitted himself with perfect quietness.

Q. State, if you can, the condition of mind in which the prisoner was.

Objected to.

Objection overruled.

He was very much agitated and was crying all the way up to the station house; had no warrant for his arrest; he was standing up when I first saw him; Mr. Summers had hold of him by the arm; I arrested him at 8½ o'clock; on his way to the station house he would stop and raise his arms and weep about his children; gave the pistol to Mr. Summers between Orange and Columbia street; can't tell that the pistols produced are the same; took him to the station house; saw him again that evening at the station house; about ten o'clock; I then went direct to Stanwix Hall; station house is at 799 Broadway: staid at Stanwix Hall ten or fifteen minutes; then went to Delavan House with Sergeant Kelly; saw Mrs. Cole at the Delavan, in her room; I think the fourth story in the rear; went at request of Mr. Cole; went from there to Stanwix Hall, and from there to station house; the prisoner was talking to a reporter, walking up and down the cell, and answering questions put to him; I left him then; saw him again near 11 o'clock and took him out of the cell to the jail, in company with Sergt. Kelly, Commissioner Shepard and another person; walked to the jail; he was a little reconciled, but very nearly as bad as when I took him to the station; he was crying and weeping.

Q. Was he weeping and lamenting about his children?  
Objected to.

The Court ruled that declarations made by the prisoner after the act was not evidence. Objection sustained.

Mr. Brady argued the admissibility of the evidence, and was replied to by Mr. Tremain.

The Court stated that it was not prepared to reverse its decision at present.

Mr. Hadley offered to prove what was said by the prisoner on his way to the station house. Evidence excluded. Exception taken.

*Alonzo Atkins* called on the part of the People, sworn: I am a policeman; these are the two pistols taken from the prisoner; at that time the single barreled pistol was discharged; the revolver was loaded, had seven chambers; this knife was found on his person.

*Egbert Whittaker* recalled: I have been an attorney-at-law since 1844, residing at Saugerties; I was at Stanwix Hall on the evening of the fourth of June last; (diagram of office shown) the front was very open on Broadway, windows on Maiden Lane side; I sat on north side, midway of room; I faced eastward; the first I saw was that a man whom I did not know came in from the east door of the office; he walked right along till he came near the pillar in front of the office desk; he slackened his pace as he approached the pillar, elevated his right hand close up against the face of a large-sized person standing there and fired a pistol; the man who was shot threw up both arms.

I heard a screech from the man who was shot. Hiscock sank some in the knees, and fell over heavily on his back and head against the floor. Hiscock had been standing with his face westwardly, and I think leaning against the pillar. He was smoking a cigar, and conversing with two men. The prisoner looks like the man that fired the pistol. He came in somewhat on a curve, and partially faced Hiscock—stood partly in front of Hiscock's right side. It seemed to me that there was a slight turning of the head of Hiscock toward the prisoner. The prisoner had to pass around a man standing near Hiscock's right side. Prisoner was eight or ten feet from Hiscock when he raised his arm. I heard nothing said by either up to the time of firing; prisoner said nothing. Hiscock fell in three to six seconds after the firing. Hiscock had slippers on his feet. There was a wound within half an inch of the right eye; the wound bled; saw something on the floor that I thought was brains; he laid very dead after he fell; after some time there was some muscular contraction and action of the limbs.

Cross-examined by Mr. Mitchell: I was stopping at the hotel; there was quite a number of people in the office room; perhaps thirty or forty; I did not know the prisoner at that time; my idea is that Hiscock stood in front of the post, facing the west, or a little to the right; the post may be ten feet from the counter; I did not discover the pistol till after his arm was up and till about the time just before the report; I heard prisoner speak immediately after the firing; prisoner stood for a moment after Hiscock fell, and then stepped towards the counter; I did not see him weep; prisoner left in two to five minutes; there was no one in front of Hiscock; several persons sat on the front stoop; I was examined before the Grand Jury.

What did you hear prisoner say after he had fired the shot?

Objected to by the People, and insisted that defence shall state what it expects to prove.

Mr. Tremain stated the grounds of his objection to be that the declarations of a prisoner are not evidence in his favor. Second, that such oral evidence is not admissible. Third, that the prisoner cannot himself give evidence of the fact of any supposed invasion of his marital rights. Fourth, the declarations, if received, tend to present a false issue, and fifth, that they were made after the homicide, and, therefore, are no more admissible than declarations made a week or month afterwards. The evidence is no part of the *res gesta*. It is wholly in the nature of *hearsay* evidence.

Mr. Tremain supported his objection by an argument of considerable length, and read several authorities upon the point.

The witness, in answer to a question of the Court, said that the remark was made by the prisoner to a person who asked, "What was this for?"

Mr. Parker claimed the admissibility of the evidence. He asserted the right to prove all that occurred at the time, and because it tended to characterize the transaction, the intent of the prisoner, and the state of his mind. He adduced authorities that he claimed supported his position.

Judge Ingraham stated that he had no doubt of the admissibility of the evidence, if the remark of the prisoner had been made at the time, or before the homicide and voluntarily by him. But he desired to call the attention of the counsel to

the fact, that the remark was made *after* the homicide and in answer to a question put to him by a spectator.

Mr. Tremain followed in support of his objection. In answer to Mr. Parker's allusion to the cases of Sickles and Mary Harris at Washington, the counsel said that the point was not raised in them, for there was no objection made to the testimony, and he also intimated the judicial authority in those cases was not of that character that he thought ought to control in the State of New York and before the Court trying this case.

Judge Ingraham repeated that he would have no hesitancy if the remark had been made by the prisoner immediately on or before the killing; but under the circumstances he had great doubt about it, and therefore would give the benefit of the doubt to the prisoner and admit the evidence. The remark would not be taken as evidence of the fact stated, and he (the Judge) would see to it that no such impression got to the jury.

The witness said : The remarks made were " he has betrayed my wife ;" " he has got it," " he violated my wife while I was at the war; the evidence is clear; I have the proof."

He said nothing about his children ; I heard nothing about that; he said something before I came up that I did not hear ; he did not weep ; I did not see him weep at all ; I saw him when he went out ; some one said he ought to be arrested ; he said he was willing to be arrested.

Direct resumed : From the firing to the fall there was a silence ; then some one said, " What was this for ?" and the prisoner answered as I have stated ; the prisoner acted very cool and self-possessed.

Cross-examination resumed : He walked up promptly ; I saw no outward demonstration of excitement ; he spoke with some emphasis ; I did not think he spoke nervously and excitedly ; he may have trembled ; I did not observe it ; I was excited ; I did not observe any effort on his part to speak before he fired.

*Cornelius Allen*, called by the People, sworn, said : I reside at Salem, Washington County ; have been for many years an attorney-at-law and have been Judge of the Supreme Court ; was at the time a member of the Constitutional Convention ; I did not know the deceased ; the Convention met on

that day ; the deceased was a member ; I had come into Stanwix Hall and was at the clerk's counter ; I heard a report in my rear ; I at once turned around ; I supposed it was the report of a pistol ; I at first saw a man lying upon the floor upon his back, his arms outstretched, blood running from his nose and mouth very profusely and he gasping ; I heard persons to the north ; I looked and saw a man with a pistol in his hand ; two persons were about him ; I heard the man make a remark.

Cross-examination : The man with the pistol said, "I considered that man one of my best friends, but he raped my wife while I was gone to the war ;" I cannot say that I heard all that was said ; he was soon surrounded, and I heard no more ; I did not hear the question put, "Why he did that?"

Direct : I did not know the prisoner ; I believe him to be the man.

*Ezra C. Treadwell*, sworn on the part of the People ; I made the diagram of Stanwix Hall, and the measurement of distances from which it is made ; the distance from the east door, where the prisoner entered, to the pillar where Hiscock stood is about twenty-one feet ; the distance from the Broadway entrance is about forty feet ; the office desk is on the east side of the room ; the distance from the office desk to the pillar is about eight feet ; the front stoop is about three feet high.

District Attorney Smith announced that he rested his case at this point.

Mr. Hadley opened the defence.

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OPENING SPEECH OF MR. HADLEY.

I regard myself as highly favored, gentlemen of the jury, in having been selected by the defendant in this indictment as one of his counsel, to represent, in part, his interests upon an occasion of so great a trial and solemnity as the present. And I deem it as both a privilege and a pleasure, that I am permitted, by the kind courtesy of my learned and much more efficient associates, to submit for your consideration the opening argument in his defence. And, as he stands before you charged with the commission of a crime, the penalty of which,

if guilty, is death; as your deliberations are to decide for him the solemn and momentous questions, whether he shall be restored (not to home, for home, alas, he has none); not to wife (for wife though living, is dead to him as though the cold grave enclosed her once loved form), but whether he shall be restored to liberty, and to the companionship and affection of his loved children, and be permitted to endure the remainder of his wretched and heart-broken existence, until a merciful God shall relieve him from further suffering by calling his crushed and wounded spirit home; or whether he shall be given over by you to a speedy and ignominious death upon the gallows, and to the corruptions of the grave. I have thought it not inappropriate to the solemnity of the occasion to introduce this defence to your notice with a brief history of some of the antecedents of the man upon whom you are called to sit in judgment; that you may know, and knowing, properly appreciate, what kind and manner of man this is upon whose life or death it has become your solemn duty to adjudicate. Although now appearing before you in bonds as a prisoner at the bar of this Court, George W. Cole is, by the commission of the President of the United States, a Major General of Volunteers, lately in the military service of the country; promoted to that high and distinguished rank, for meritorious services and distinguished gallantry in fighting the battles of the rebellion during the four long years of cruel and bloody war from which the country has so recently emerged.

Born at Lodi, in Seneca county, in this State, in the year 1827, he is now in the 41st year of his age. Reared upon the farm owned and cultivated by his father, he remained at home until his 17th year, and not possessing the advantage of a wealthy parentage, his time was occupied by working on the farm during summer seasons and going to school winters and devoting such leisure time as could be spared from necessary labor to his mental culture and improvement. At the age of 17 he left home for the purpose of entering a seminary of learning established at Lima, in Livingston county, with a view of preparing himself for college, and at the age of about 20 entered as a student in the University of Middletown, in the State of Connecticut, where he remained for about two years, and like so many of the self-made and prominent men in this

country, studying hard during the summers and supporting himself and paying the expense of his education by teaching school and studying during the winters, and college vacation. Leaving the University, he entered the Medical College at Geneva, and studied for about two years the profession of medicine and surgery, and graduated and received his diploma as a physician about the year 1850, studying when the college was not in session with Dr. Smith, a distinguished physician at Geneva.

Having now concluded his studies, he found an opening to commence the practice of his profession in the town of Trumansburg, in Tompkins county, and moved to that place in the spring or summer of 1851, where by his scientific attainments, his professional skill and gentlemanly deportment, he very shortly succeeded in establishing a large and successful practice. In the early fall of that year he became acquainted with Miss Mary Barto. She was the daughter of Judge H. D. Barto, a prominent and influential citizen in that section of the country, a distinguished lawyer by profession, but then living in the enjoyment of those ample means which a long life of industry, economy and integrity had enabled him to accumulate. Miss Barto was a young lady of great personal accomplishments; of refined manners; of a most chaste and polished address; and who, but for the foul wrong and great crime of the deceased, a crime and wrong which causes you to assemble here this day, would now be one of the happiest and most honored ladies in the land.

Yes, she was good as she was fair,  
None, none on earth above her;  
As pure in thought as angels are;  
To see her was to love her.

The acquaintance once formed, soon ripened into intimacy; from intimacy into affection; and with the approbation of her father and the friends of the family, Dr. Cole was married to Miss Barto, at Trumansburg, on the 10th day of September, 1851. It was a union of mutual affection. On the part of the defendant he worshipped this lady with a feeling of adoration scarcely less than idolatry; he loved her with all the affection of which the most ardent nature is capable; he lavished upon her all the treasures of his heart, and in the sight of



God and man took upon his conscience the solemn vow that he would love, comfort, honor and keep her in sickness and in health; and that forsaking all others he would cleave only unto her so long as they both should live. Little did he then anticipate that the pure chaste girl he pressed to his heart with all the ardor of love and of youthful passion, could ever fall a victim to a base, adulterous lust, or become an object for the hand of scorn to point its slow and moving finger at.

But let me not anticipate. Shortly after the marriage, Dr. and Mrs. Cole commenced housekeeping and removed to Trumansburg for about a year, he continuing the practice of his profession. From there they moved to Havana, Schuyler county, where he purchased a drug store, and engaged in that business. It may be interesting to you to know why he should quit a lucrative and honorable profession to engage in another department of business. The evidence in the case will furnish the answer to the inquiry. It will show the defendant to be a man of a peculiarly sensitive temperament, of a nervous disposition, and of most acute sensibilities, and he could not harden his nature to witness with indifference those scenes of suffering and distress which the good physician is so often called to minister to, and yet find himself unable to alleviate. To stand by the bedside of some dying parent; to witness the grief of children and of friends as they stood around the death bed, and yet to be unable to furnish relief, or to utter a word of consolation or of hope, so wrought upon the tender sensibilities of his nature, that the continuance of his practice became distasteful to him, and he sought relief by engaging in another pursuit which would spare him the necessity of so constantly witnessing scenes of suffering and distress. At Havana, he carried on a successful and prosperous business for about two years. While at Havana, and in the spring of 1853, there was born to him his first child, Fanny by name.

In 1854 or '55, Mrs. Cole and the child were both taken down with severe sickness, and attributing their indisposition to the malaria and unhealthiness of that locality, they concluded it best to sell out their business, and having done so, returned to Trumansburg for a short period; and while staying at Trumansburg, their second child, Alice, now about 12 years of age, was born. In 1856, he purchased a farm in West Lodi, on the

bank of the beautiful Seneca Lake. On this farm they remained until the month of April, 1857. Mrs. Cole having always lived in a populous village and being much accustomed to society, became dissatisfied with the retirement of a country life, and discontented to remain longer upon the farm, and having no object in life superior to that of gratifying and pleasing her, at her instigation he sold the farm, and shortly afterwards, and in the fall of 1857, they moved to the city of Syracuse. In the spring of 1858 he purchased an interest of two-thirds in the lumber business of a Mr. Vassall, and in 1859 bought out Vassall's interest, and continued doing a prosperous and paying business until the first act of war was committed by the seceded States against the United States government. Scarcely had the smoke from the first rebel gun fired at Fort Sumter died away, scarcely had the ink become dry upon the President's proclamation calling for volunteers in defence of the imperilled life of the nation, before George W. Cole, impelled solely by the pure spirit of patriotism, enrolled his name as a private in the 12th N. Y. Volunteer Infantry, and mainly by his own efforts, and by the outlay of his own means, raised the first full company of volunteers that was raised in this State. Unanimously elected Captain of the company, and the regiment being filled up, they marched from Syracuse amid the firing of cannon and the music of several bands, accompanied by the prayers and benedictions of thousands who assembled to witness their departure; and as they bade adieu to home, and wife, and children, each man's heart was nerved to thoughts of loftier resolution by the pledge then made, that while absent in the field, the loved ones left behind should be the sacred wards of a grateful country, and that if the heroes of the nation fell in the path of duty, that country would adopt, cherish, support and protect as its own, the widowed mourner and orphan children of those who yielded up their lives that it might live. Prominent among those by whom this pledge was made was L. Harris Hiscock. With what fidelity he kept that pledge, the sequel will disclose.

It is not essential to my purpose that I should attempt to lay before you even the most condensed sketch of the military career of George W. Cole. Time would utterly fail me should I attempt to do so. The briefest narrative would consume the space of an entire day. For four long weary years, from

spring to autumn, from autumn to spring, through the heats of summer and the blasts of winter, George W. Cole has stood face to face and foot to foot in deadly conflict with the ever rallying hordes of treason; and in skirmishes, in raids, in night surprises, in night attacks, on picket and on the march, and in pitched battles, he and his brave companions have beaten back the rebellious crew from State to State, until cowering and vanquished they have been made to know that the much derided valor of the North was worthy of the sacred cause for which her hero sons periled their lives and dared to die.

When after time shall scan the roll of those who have made for themselves an imperishable name; when the pen of the historian shall set in order the toils, the sufferings, the indomitable courage, the unfaltering heroism and the unwavering ardor of those who fought with the brave Army of the Potomac, from that dark and gloomy day when the spreading ensign of the nation's glory was ignominiously lowered by sacrilegious hands, from the ramparts of Fort Sumter, until that bright and balmy day, when four years later that same flag was gloriously reinstated in its place, and the Stars and Stripes were fluttered to the breeze amid the booming of rejoicing cannon, the strains of merry music and the glad acclamations of the ten thousand there assembled to witness the Sumter celebration, the name of George W. Cole shall be found gloriously ascending the current of the stream of Time, and be transmitted bright and unsullied to the gratitude of coming ages. Be the issue of this day's trial what it may, to the justice of posterity I am content to leave his vindication. It is only to such events in his career as will be found to have a direct bearing upon the questions *you* have got to decide, that I propose to make the briefest possible allusion.

Passing uninjured through the first bloody battle of Bull Run, where a glorious victory gained by raw and undisciplined troops, was changed into an inglorious route by the incompetency of those in command, he was shortly afterwards transferred to and commissioned by Gov. Morgan as Captain of the 3rd New York Cavalry. While holding this position he received a severe and dangerous injury, which it is necessary to bring to your notice. In 1862, while charging on Rebel pickets at full speed, his horse, a large heavy animal, suddenly fell,

and being unable to disengage himself from the saddle, owing to a previous wound in the thigh, rolled over him, compressing the breast bone inwardly to such an extent as to prevent respiration almost entirely for some moments, and for a long time partially. The cantle of the saddle was forced against the left side of the stomach with such great violence as to cause the bowel to protrude from the anus for some three or four inches, a protrusion which was not reduced for some six or seven days afterwards. You will readily understand how great the violence and shock must have been to have produced so serious a result.

While in this condition, he was tied on to his horse, compelled to ride in the saddle all night and the next day, exposed to a storm, unsheltered all the next night, and not able to reach the hospital until the third day following the injury. Ever since that time he has suffered from great disarrangement of the system, affecting the lungs and vital organs. The bowels and bladder omitting to perform their proper functions, oftentimes unable to obtain any evacuation for ten days and two weeks at a time, the evacuation when produced being accompanied with hemorrhage; sometimes profuse, and always causing a protusion of the bowel to such an extent as to necessitate its return by working it back into its place by compression of the hand. This injury it will be well for you to bear in mind. Its extent and the effect upon the physical and mental constitution of the man will be hereafter described to you.

In the fall of 1862, Captain Cole made what is known in the history of the war as the great Kingston raid. Pardon me, gentlemen, if in justice to a brave and persecuted man, I so far trespass upon your patience as to ask attention for a moment to the manner in which the man whom you are trying for his life, was regarded in these days which tried men's souls.

For this and other gallant achievements he was commissioned by Gov. Seymour, Major of 3rd N. Y. Cavalry. Subsequently appointed on Gen. Butler's staff as Inspector of Cavalry. At his own expense and without a dollar's cost to the government, he raised an entire regiment of colored cavalry, numbering some 1400 men, at a time when the government were clamoring for troops, drafting was going on at the North, and States and counties were glad to secure men by bounties of

\$1000 a head, and to his imperishable honor let it be known, that having the opportunity to have realized \$100,000 if he would transfer these men to the quota of an eastern State; he refused the offer, never received one dollar for organizing the regiment, and he is to-day, by the expenses then incurred, a poorer man than when in April, 1861, he subscribed his name to the muster roll as a private soldier in the service of his country. Commissioned as Colonel of this regiment, he was subsequently made Brigadier-General and afterwards promoted Major-General. And so highly esteemed were his services, that after the surrender, the government refusing to muster him out of service or to disband his men, ordered him to City Point, there to organize a brigade, and from there sent him to Texas to watch the operations then in progress on the Mexican border; kept him there until the danger of collision between this government and that of France had passed over, and finally mustered him out of service in February or March, 1866.

Retired from the perils and hardships to which he had been so long subjected, I need not attempt to picture to you with what joyful anticipations he looked forward to a happy reunion with his wife and children. After an absence of five years from home; exposed daily to danger and death; the pride of his companions, with a name and reputation of which any man might feel justly proud, he looked forward to the endearments of his home with an impatience which admitted of no delay. His hopes, his joys, his ambitions, all centered there; amid every variety of danger and privation, Hope had pointed to his wife and children; next to the pure spirit of patriotism which animated him, it was for them he had toiled and suffered, and exposed himself to death in every form of danger. In camp, and on the field; by day and by night; the loved images of his wife and children had been ever present to his memory; his parental and conjugal affections had been the solace of his life; and with his country saved, and his duty as a gallant soldier well done, he was now to return again and enjoy those comforts in the bosom of his family, which he would not barter one moment for all the wealth and honors this world could bestow. Vain, cruel delusion! He did return, but scarcely had the congratulations of his friends and the warm welcome of his neighbors died away, before he discovered that

some dark, portentous cloud was hovering between him and the happiness he had so joyfully anticipated. The wife of his bosom; upon whom he had lavished all the wealth of his affections, had become a changed woman. She whom he had left so kind, so full of affection, greeted his return with cold indifference; thoughts of horror and remorse seemed to occupy her mind; her former affection for her husband seemed to be transformed into a feeling of settled aversion; her lips gave no utterance of her former love; she had become cold and unimpassioned as the marble; disgust and alienation towards her husband seemed to possess her, and to such an extent did her aversion proceed, that she denied him those marital privileges, which, as her husband, were his of right to demand.

What had caused this change? Ah, gentleman, the serpent had entered into the paradise of his happiness, and the woman had fallen. A libidinous scoundrel had polluted her being; had stolen away her affections, and by the magical sorcery of the adulterer's spell, had transformed her former love into settled hatred and aversion. But not at that time did this defendant know or suspect the full extent of the woe and calamity that had fallen upon him and his household. The discovery of her infidelity and the detection of the guilty wretch who had stolen his wife's purity, and his happiness, were yet in reserve for the future.

So marked a change in her from love to aversion could not take place without leading to comment and remonstrance from him. To his kind and loving expostulations as to her conduct; to his affectionate entreaties to be made the confidant of her sorrow, that he might share and alleviate her grief, she deluded him by attributing it to false causes, indisposition, ill-health, lowness of spirits, melancholy, hypochondria had caused it. From his confiding disposition and the exceeding love he bore her, he trusted to her truthfulness. It was impossible that any suspicion of her fidelity could diminish his confidence in her purity. She, the mother of his children, so modest, so reserved, so dignified, so childlike, formerly so good, how was it possible he would suspect her of yielding to another's brutal and licentious lust. No! the suspicion was impossible. Believing that sickness and low spirits were the fiends that assailed his domestic peace, he studied how he might win her back to cheerfulness and affec-

tion. He accommodated himself to all the variegated phases in which her unhappy temper manifested itself; he redoubled his tenderness toward her; he humored her waywardness; in a thousand different ways he studied how best to please her; to divert her melancholy he took her to places of amusement. Vain, useless effort! The spell of the serpent was upon her; the fascinations of the seducer had entered her soul, the foul tempter of her innocence with a villain's wile and a villain's wickedness was still in hot pursuit of the victim of his lust.

Dispirited and discouraged at the failure to regain his wife's affection; his vision of happiness dissipated; liable to and constantly anticipating sudden death as a consequence of the injury to the bowels to which allusion has been heretofore made, his health and constitution shattered, a marked and perceptible change came over his temperament and disposition. He, too, became an altered man. He became sad, dejected, pensive and abstracted in his thoughts. He fell into the deepest despair. Instead of the gay and sprightly disposition he had always manifested, a settled melancholy seized possession of him. His former friends and companions observing his altered demeanor, knowing his idolatry for his wife and children, and not knowing of any domestic trouble to agitate his mind, attributed his altered appearance and conduct to his connection with the army and to the scenes through which he had passed during the war. It is a painful circumstance in connection with the foul wrong which the evidence will reveal to you, that this defendant and the deceased L. Harris Hiscock, were and had been, for a length of time previous to his death, warm personal friends. Before a man can deliberately debauch the wife of the friend who confides in him, he must have become utterly abandoned to every principle of virtue and be lost to every sentiment of manly honor. It was Mr. Hiscock who was recommended by this defendant to Mrs. Cole as her confidential and professional adviser in such matters as she might need counsel during his absence in the army. And it aggravates the wickedness of his conduct that in availing himself of the opportunities for seduction he not only violated the confidences of friendship, but trampled under foot the sanctity of professional relations.

Having no pleasure or affections beyond the sphere of his domestic life, never absent from home except upon necessary

business, finding what little of solace was left him in the company and amusements of his children—about the spring of 1867 Gen. Cole received an appointment under the government as special agent of the Customs. The duties of the office requiring much of his time to be spent in the city of New York, he had made arrangements with a Mr. Tillotson, of Brooklyn, a relative of Mrs. Cole, to receive his wife as a boarder, hoping by this arrangement to retain his wife's company, and at the same time, by change of scene and association, and by indulging in the innocent amusements of metropolitan life, to divert her mind from the morbid feelings and thoughts preying upon it. And I am now about to relate to you the events which occurred on the ten days or two weeks immediately preceding the tragedy at Stanwix Hall. About the 27th or 28th of May, he met Mr. Hiscock in the street at Syracuse. Stopping to converse, Hiscock abruptly inquired: "When are you going to New York, General?" (He had made the same inquiry of the General on several previous occasions.) Something in the manner of the inquiry and of the man who made it aroused his attention. Why is this man always so anxious to know when I am going away from home? at once occurred to him. Looking at Hiscock suddenly and sternly in the face, he observed his countenance apparently fall under his gaze, and without waiting for any reply, the guilty man turned away and shrank from the sight of the abused friend whose rights he had outraged. He watched him in astonishment. At once suspecting that there was something wrong; what the nature of the wrong was he could not imagine. The inquiry kept ringing at his heart: Why does this man want to know when I am going to be absent from home? Still no suspicion occurred as to his wife's fidelity. He returned home perplexed and agitated. The first person he saw there was Mrs. Mary Cuyler. Now mark what took place. Mrs. Cuyler was a cousin of Gen. Cole, had been brought up by him and had lived in Mr. Cole's family during the General's absence in the army, and had observed much that had occurred.

Seeing her he addressed to her, very naturally the inquiry, "What's the matter with Hiscock; he looks, to me, as guilty as a dog?" Thrown off her guard by the abruptness of the inquiry; suspecting that the General had learned or heard



something, but not knowing ~~what~~, Mrs. Cuyler somewhat evasively replied, "Yes, Dr., there has been a good deal of talk about *Mrs. Cole's flirtations with Mr. Hiscock*." Stunned and horrified at the suggestion, he exclaimed, "Mrs. Cole's flirtation! what do you mean?" Perceiving now, with a woman's quick perception, that he was still in ignorance of any misconduct of his wife, determined not to be the first person to disclose the fatal secret that was to blast his happiness and carry desolation to a once happy household, Mrs. Cuyler utterly refused to say anything further upon the subject, and to his entreaties would only reply, "You write to Montgomery Pelton and he can give you some information if he sees fit." With this scanty information he was compelled to go to New York. I leave you to imagine, if you can, what must have been the feelings of such a husband at the discovery that his wife (and such a wife as he had fondly pictured her,) could have been guilty of such imprudence of conduct as to make her name the subject of remark or scandal; for not even yet did he know the full extent of the heavy calamity which had fallen upon him. From New York he wrote to Mr. Pelton and awaited his reply, in a condition of great mental suspense and torture. Some evidence will be given you as to his mental sufferings during these few days. I cannot trust myself with the attempt at their description.

The fatal reply reached him on Saturday, June 1st, and from it he first realized the suspicions that by the guilty conduct of this man Hiscock he was not only forever deprived of the comfort and society of the wife he so adored, that not only were his innocent children robbed of their mother's pure affection, but that he himself was placed in a situation too dreadful, too horrible to be endured. It was a condition to overwhelm the mind of any man. It was a torture that no words can communicate, no language can depict to others. What should he do; where could he go; what would become of his little children, thus cruelly bereft of a mother's fostering care; how should he shelter those little lambs from the shame and sorrows thus made their inheritance; whither should he fly and forget the burning, damning disgrace brought upon his name and household? He, the gallant soldier who had stood so often in the very jaws of death and faced it at the cannon's mouth, how could he bear this great

disgrace? His dishonor would speedily become known not only to the army in which he had served with such proud distinction, but to the whole world. Not a tent, not a hut in the land in which his once honored name would not be bandied about—a jest in the mouth of profligate poltroons—pronounced with wasted pity by the compassionate brave. He who commanded heroes with pride amid the fiercest din of the battle's roar, never had he need to be ashamed as he looked upon his colors and took the foremost place in the line of battle; but no wretch ever led to execution for desertion or cowardice ever shrank from the sun or from the sight of human faces with more shame and horror than did he when after reading that dreadful revelation he gathered from it the fact that she he loved so tenderly was sunk in sin and shame and steeped for evermore in uttermost pollution. But he would go once more to his home; he would confront his once innocent and still loved wife, face to face; he would hear from her own lips the sad, sickening story; no matter how indiscreet or imprudent she may have been; he would bless God for the imprudence and still forgive her if she had but stayed her feet on the brink of the precipice before taking the last leap into the fathomless abyss. Poor, deluded man! your last hope is shortly to be disappointed, and you have soon to learn that the once honored name of Mary Barto Cole has already become a thing of scorn for the ribald tongue of any libidinous scoundrel in Onondaga county, to fling its filthy, vulgar jest at.

Returning to his desolated home by way of the Hudson River Railroad, his strange and wild appearance and conduct attracted the attention of a gentlemen connected with the naval service, and with whom Gen. Cole had formerly had a slight personal acquaintance. You will hear from that gentleman an account of Gen. Cole's mental condition, so far as the witness is capable of describing it. Visions of suicide then haunted his brain; he thought he would throw himself from the platform while the cars were in motion; but if he did, perhaps they would say of him that he had fallen from the cars while drunk; he must write a letter to his wife and communicate to her his knowledge of her guilt; he must send one final parting benediction to the children he loved so tenderly; he would then jump from the cars and find peace, and

be at rest beneath the quiet water as they crossed the Albany Bridge. But, oh God ! what would become of his poor children thus doubly bereft ; no, he would see his poor childlike wife ; perhaps she might not be so very, *very* guilty.

Such were some of the conflicting thoughts which distracted this poor heart-broken man during that fearful night ; the interview with his wife was had and ended ; it confirmed his worst fears ; her over-burthened conscience could no longer retain its guilty secret ; on the morning of Sunday the 2nd day of June last, he received from her a statement of her fall ; of her adulterous guilt and of his own disgrace. Taking advantage of his absence, calculating probably his own safety by the chances that this defendant would never outlive the dangers to which his courage and ambition daily exposed his life, the cowardly adulterer had invaded his household, stolen his wife's affections, robbed her of her purity and polluted her person. It is impossible to describe the agony and distress of mind into which he was thrown by this communication. There are some excesses of grief so profound, so overwhelming one knows not how to deal with them. So was it in this case. The day was spent in the privacy of his own room, in the company of his fallen and degraded wife, in tears and groans and unutterable sorrow. To whom could he look for relief ? Alas, there was none could mitigate his great sorrow. To whom could he look for consolation ? Not to his children ; for their once joyous countenances, now toned to sadness, only intensified the agony of his reflection. His hopes of happiness forever blasted ; his house a desert ; his children motherless, not from the orphanage that springs from death, but from the remorseless cruelty of maternal guilt, with his brain on fire, while every fiend of hell seemed let loose upon his heart ; is it to be wondered at that he was unable to resist the stream of his great agony, or that reason was for a time hurled from her throne, and his mind became shattered to ruin. Is there a right-minded moral man in this community who can listen to such affliction without feeling overwhelmed with indignation at the guilty perpetrator of so foul a wrong. Is there a husband, a father, or a brother, within the sound of my voice, having but one dear darling of his heart's affections in whose sympathies sorrow has found its charm, whose love has alleviated his misfortunes and guided him through dan-

ger and darkness, seeing her become the prostitute of a base libertine's lust, whose heart does not instinctively re-echo the precept of Almighty God, that "the man that committeth adultery with his neighbor's wife, the adulterer shall surely be put to death." The thief who steals your property may have want, and poverty, and hunger to palliate his crime, yet he is nevertheless the subject of criminal punishment by the law of Society ; but the thief who deliberately robs you of your domestic joys, knows that he may steal in security ; for no punishment is provided by the law of society against his crime ; and unless there is courage at the heart, and nerve in the right arm of the injured husband to redress his own wrongs, he goes unwhipt of justice, to repeat the same foul transgression in your family or mine, at the first convenient opportunity. The thief who invades your dwelling to steal your money is a felon, and expiates his crime behind bolts and bars in a felon's cell.

But the thief who enters your dwelling to rob you of the priceless jewel of your wife's virtue, mocks with impunity at the wreck and ruin he has caused, and is, perchance, elected member of a Constitutional Convention, or becomes the legislator of a State, to guard, with a watchful, jealous eye, against the passage of any law that shall check him in his amatory pursuit after other men's wives. He may add to his lists of conquests the name of *my* wife or of *yours*; he may record upon his tablets my name or yours as the cuckold husband whose wife he has made the prostitute of his lust ; he may boast of his conquests to fashionable companions as dirty and contemptible as himself ; he may laugh at the dejected air and emaciated countenance which his triumph causes, and he laughs in security, for his coward heart fancies that while there is no law to protect the injured husband, abundance of musty law can be exhumed from the records of barbarous antiquity to punish him if he protects himself. Talk about the duty of patriotism in defence of a man's country ! What object has any man to defend his country if he is to be hung for defending his own family ?

Let us resume now, gentlemen, the narrative of events in the order of their occurrence. Greatly fallen and degraded as the confession represented her, yet the fond heart of the ruined husband still strove to regard her as more sinned

against than sinning. He knew what wiles, what artifices, what deceptions must have been employed before the seducer could have triumphed over the virtue of his pure, chaste, and childlike wife. She had a brother; perhaps he could suggest some palliative for this intolerable anguish. He must see Henry; he determined to take his advice and be guided by his counsels. A dispatch was accordingly sent to Mr. Henry D. Barto, Mrs. Cole's brother, begging him, for God's sake, to come to that house of desolation and woe. In due time, the answer came that Mr. Barto was in New York or Albany; and I call your attention to this dispatch to show you that Gen. Cole's object in coming to Albany was not to meet Hiscock, but to see Mr. Barto. I have barely alluded, and in the most general way, to the mental condition of the accused during portions of the day on Sunday. Sunday night, Monday and Monday night intervened, but they brought no diminution to his mental excitement and agony; the longer he reflected upon his disgraced, miserable condition, the more intolerable it became; the longer he thought of it, the more the thought maddened his brain. The days passed without food; the nights without sleep. The desire to see and consult with Mr. Barto became painfully oppressive, and finding it impossible longer to endure this strain upon his nervous system, after a variety of conflicting and agitating resolutions, he concluded that on Tuesday morning he would take Mrs. Cole to her relatives at Brooklyn, stopping at Albany to see Mr. Barto, if he should happen to be found here, or in New York, if there. This was the sole reason of their coming to or stopping at this place. So intense was the agony of both the General and Mrs. Cole, that under the apprehension that one or both would commit suicide if left alone, Mrs. Cuyler insisted that her husband should accompany them on their wretched journey.

In sorrow and shame they embraced their weeping children, turning their backs upon their once happy, now desolated home; anxious to escape public observation, in the dread that he could read the knowledge of his disgrace in the countenance of every passing acquaintance, they reached the cars through back and secluded streets, and were carried from Syracuse by the 11 o'clock train. You will hear from Mr. Cuyler what occurred during that never to be forgotten journey. Arriving at Albany, Mrs. Cole and Mr. Cuyler left

the cars on the side from which the passengers usually land, while Gen. Cole, haunted and distressed by the delusion that his disgrace was known and read of all men, and unable to endure their gaze of pity or of scorn, hoped to escape public observation by landing on the other side, and by a more retired route shortly afterwards rejoined them at the Delavan House.

The long desired interview with Mr. Barto took place and soon ended. In the course of it Gen. Cole first learned that Mr. Hiscock was then in Albany. Of that interview I do not like to trust myself to speak, but in justice to my unfortunate client I cannot forbear the remark that had there been any warm manifestation of brotherly regard, had there been any judicious sympathy with the crushed and bruised spirit of the sorely afflicted man, the unhappy tragedy which forms the subject of this day's investigation might have been averted, and the Court have been spared the solemn duty in which it is now engaged. The interview over, his frenzied mind possessed itself of the idea that he must see Hiscock. It was not malice, it was not mischief which prompted the desire. In his frenzy he believed that he was calm and that he could control the outburst of his feelings. He had struggled fearfully to master the instincts of his nature and intended to struggle to the end. He felt that Hiscock had abased and degraded him—he would make Hiscock abase and degrade himself; fortified with his wife's confession he intended to charge him with the perfidy of his conduct; abjectly and at his feet Hiscock should confess his crime and in humility and self-abasement should supplicate his forgiveness. His pride and self-respect thus mortified, they would stand in that respect upon a common level. This done, he would leave the guilty man to the retribution of a just God, and his evil conscience, and in the retreat of some solitude yet to be discovered, this broken-hearted man would bear the fate so cruelly imposed upon him in shame and submission.

Still haunted with the idea that every eye could see in his sad and dejected countenance the story of his wife's dishonor and his own disgrace, he entered Stanwix Hall, by the side entrance from Maiden Lane, as being more likely to escape the observation he so much dreaded. It was his intention to have stepped up to the counter, have obtained an inspection

of the hotel register, and thus learning the number of his room, to have proceeded to it and have had the interview in private. As he approached the office, the false, deceitful friend who had betrayed him to his ruin, suddenly and unexpectedly appeared in his path ; there stood the man who had seduced his wife ; the tearful countenance of his sad and dejected wife ; the weeping faces of his motherless children ; the memory of his desolated home and departed joys all flashed upon a brain surcharged to madness ; overpowered by the violence of his emotions ; unable to reason or reflect, deprived by the frenzy of the moment of all power to control his own will or judgment, by the confusion of his mind rendered wholly unconscious of the nature of the act he was committing, the nand, unaided by the will of George W. Cole, discharged the fatal pistol, and there fell the lifeless corpse of the adulterer at the feet of the avenger whose marital rights he had invaded, whose heart and home he had crushed and blighted, and whose reason he had shattered ; and all this suffering and misery occasioned in order that his unholy lust might revel in a momentary gratification. Unconsciously the deed is done ; done in a public place ; in the presence of a score of witnesses ; the mourning perpetrator makes no attempt to elude the claims of justice ; sadly and submissively he resigns himself to whatever suffering and sorrow is yet in store for him ; and conscious of the rectitude of his own heart and sustained by the approval of a good conscience, he can appeal to that God who ordained and sanctified the marriage relation and say meekly, but without trembling, "Not my will, but thine be done."

And now, gentlemen, the sin of the adulterer has wrought its perfect work and has brought forth death—the accustomed product. Experience teaches us that its usual culmination is in the death of the outraged husband before discovery. What it would have led to in this case but for its discovery, is not left altogether to conjecture. The voice of instinct and of nature tell us that the man who will deliberately seduce another man's wife must do it at the peril of his life if discovery takes place. When the man of pleasure deliberately and coolly plots the seduction of your wife or of mine, he knows that he takes his life in his right hand to be offered up as the penalty of his guilt if detection takes place. When L. Harris

Hiscock first cast his lustful gaze upon the person of Mary Barto Cole, and resolved to add her name to the list of others who had already fallen as the victims of his lust, he knew then as well as the world knows now, that if George W. Cole made the discovery of his guilt, this broad continent was not wide enough to shield him from the frenzy his own guilt created. In his double character of legislator and lawyer he knew that the right to redress these wrongs for which society fails to provide any remedy, was founded in the law of nature ; and that when the individual cannot resort for protection to the law of society, that law, with equal propriety and justice considers them as still under the protection of the law of nature. He knew that the fabric of society was built upon that instinct of the human heart which ever impels the wronged husband to vindicate the sanctity of the marriage bed ; he knew that the impulse which prompts the wronged husband to slay the seducer of his wife, or the afflicted father to slay the seducer of his child was implanted in the breast of every living man by the hand of God himself ; and knowing the character, disposition and temperament of this defendant, he knew that George W. Cole could no more resist this instinct of his nature, than he could change the stars in their courses, or arrest the whirlwind in its wrath.

And now, gentlemen, in view of all this misery and desolation, caused and originated by L. Hiscock for the momentary gratification of his unhallowed lust, the question is to be submitted to you as husbands, as fathers, as moral minded men, to decide what was the character and nature of the act which George W. Cole committed, when with reason temporarily dethroned, he took the life of this destroyer of his domestic peace. On the part of the distinguished gentlemen who represent the prosecution, both in its public and private interests, that act is and will be denounced as an act of willful, deliberate and premeditated murder. Without designing to impute improper motives to any one, it is at least a matter of regret that the conduct of this prosecution was not confined to the properly constituted law officers of the State, whose professional zeal is, or at least is supposed to be, somewhat restrained by the obligations of official responsibility. It is always unfortunate when the zeal of those charged with the inquisition for blood owes its inspiration to considerations of pecuniary gain, or



where the effort to send a man to the gallows is graduated by the liberality of the counsel fee received, to produce that result. However calm, dispassionate and impartial, private counsel may suppose themselves to be, yet we cannot forget, it was the "thirty pieces of silver" which induced the betrayal of innocent blood, nor overlook the fact, that when the efforts and eloquence of the advocates are purchased and paid for by private funds, there is always danger that these efforts and that eloquence so bought and paid for, may represent more effectually the views, wishes and private feelings of their employers and clients rather than aid in that calm and dispassionate inquiry which has no other object than the discovery of truth.

Not that the distinguished gentlemen who represent the private interest in this prosecution are influenced by considerations one whit more mercenary than those which actuate the counsel for the defence; but the difference between us is this: We stand here to defend the living man; they stand there hired and paid to hound him on to the gallows if they can. We ask you to look at this tragedy in the light of all its surroundings; they are sent here to labor to suppress that light and to compel you to arrive at truth in the midst of darkness; selected from the bright array of learning and talent which adorn the bar of this State, for those commanding qualities of learning and of eloquence which have won for them professional fame upon many a hard fought field of intellectual contest, they are sent here to-day to persuade you, if they can, that the act of the frenzied husband, slaying the man who desolated his home and polluted his wife, is of the same grade of criminal enormity as the act of the thief, who murders in order to pilfer; and that there is no distinction in guilt between the man who slays in order to *commit* a crime and the man who slays in order to *prevent* one, that crime being the continuance of an adulterous intercourse with his own wife. They are employed and sent here to represent this defendant as a blood-stained murderer, moving to his work with cool premeditation, and with a wicked, depraved and malignant spirit, and only now *pretending* to a mental derangement at the moment of the act, in order to constitute an exemption from criminal responsibility.

To us he appears as the pure patriot; the gallant soldier; the loving husband, the foud father; the good citizen; the refined

and polished gentleman, suffering under the visitation of the darkest calamity that can ever oppress or overwhelm the human heart. The issue presented is a plain and simple one. I shall not seek to furnish any middle ground on which to stand. I accept the issue; I may be thought rash to jeopardize the life of my client when I prefer to trust the case, either as one wholly excusable by the law and the evidence, or as one of murder in the first degree. I claim that it is either excusable homicide or murder; I claim that it is not murder, but that it is excusable. In taking this view, let me do the learned and experienced gentlemen with whom I have the honor to be associated the justice of remarking that they are not in any manner responsible for my view of this case. The view which I take of it is my own, and I alone am responsible for it. Others may think it would be a wiser policy to attempt to bring this homicide within one of the lower degrees of manslaughter, and punishable by imprisonment in the State prison for a term of years.

But on behalf of my client, I say, with great respect, I want no compromise verdict. I denounce the false humanity which would purchase the life of an innocent man, at the costly sacrifice of his liberty for years; which would bid him live, but at the sacrifice of all that makes life worth living for; which would rescue him from death, only to inflict another punishment more dreadful than the agony of dissolution. No, gentlemen, I repeat that I want no compromise verdict. If, upon the evidence to be submitted to you, you can have the heart to pronounce this defendant a murderer, be it so; it is upon your responsibilities to God, to your consciences, and to him, that you will so decide; it is at your hands that requisition will be made for his blood on the day of the last grand assize; he has suffered much already, but he can suffer more if it be your good pleasure so to ordain; he has faced death at the cannon's mouth; he can look upon it without trembling if it comes upon the gallows; it may be that his heart will quiver, and his cheek may blanch, at what the brave soldier regards as the disgrace of such an end, but it will be with a heart and conscience as free from all feeling of self-condemnation as the jury who may pronounce the verdict, or the judge who, in obedience to it, shall sentence him to die.

I shall not, therefore, trouble you with any inquiry as to

what constitutes murder in the first and second degree, nor be led into any discussion as to the different degrees of homicide. On the letter and the spirit, the majestic reason of the law, of both God and man, I take my stand, and deny that there is any stain of guilt, either upon the heart or the hand of George W. Cole. It is true that the hand of George W. Cole shot down L. Harris Hiscock; but the wrongful act that deprived him of all power of self-control, and caused that hand to act involuntarily, comes here also, and asserts its supremacy over every heart. If it be true, that it is the reason of man which makes him accountable for his actions, then it cannot but be true, that the deprivation of that reason, at the moment the act is done, acquits him of criminal intent.

We see and recognize in all its terrible ghastliness, that on a lovely summer's evening, a prominent and influential citizen, a legislator, and a lawyer, was suddenly stricken out of existence; but with the act we hear the wailing cry, "that man was my best friend, but he has ruined my simple, child-like wife," and we know that that cry is the utterance of a broken heart. The act for which he is now on trial for his life, and the cause which led to it are so bound and linked together by the same chain of testimony that they cannot be separated. The avowal of the wrong which had maddened his brain was made in the presence of the same spectators who witnessed the pistol shot; it ascended to heaven as the agonizing cry of an oppressed and burthened spirit, and it is here to-day appealing, in all its sadness, to the heart of every husband and father in the land.

Seeing the deceased thus publicly stricken down, hearing at the same moment the cause which led to the commission of the act publicly proclaimed, we have the right to hope that it will be the anxious desire of every juror on this panel to investigate in every direction for the truth or falsehood of the alleged cause. It will be the effort on the part of the counsel for the defence, to open the inquiry as broadly as possible for your investigation. We anticipate that the effort on the part of the private counsel for the prosecution will be to limit the inquiry within the narrowest possible space. That is what they are sent here for; to suppress and shut out truth. We shall attempt to lay before you the saddest picture of crime, of lust, of seduction, of betrayed friendship, of a desecrated home and

of household ruin, that the eye of man has ever yet rested upon. Our learned opponents dare not, if they can prevent it, let you inspect the perfidious and heartless traits of character in the deceased, which, if received, the evidence in this case will disclose.

Consider now, if you please, the principle upon which the law justifies and exempts from punishment the husband who, seeing another man in the act of adultery with his wife, kills the adulterer in the act. The law extenuates the killing in condescension to the known infirmities of flesh and blood. It recognizes the fact that this criminal intercourse is the very highest indignity which one man can inflict upon another, and that its natural and unvarying effect is to produce such a tumult of the passions as to stifle the voice of reason. It is not the mere fact of seeing, but it is the knowledge, no matter how obtained, that the adulterous act had been committed, which excites this tumult of the passions.

In what ever way that knowledge is acquired, whether by coming suddenly upon and surprising the parties in their guilty embraces, or by information suddenly obtained, the effect upon the mental emotions is precisely the same; it is not the mere fact of seeing the guilty pair in the actual coition, but it is the transport of passion created by the knowledge that the fact exists that justifies the taking of human life; and the frenzy produced is equally great whether that knowledge is acquired by the sense of sight; by hearing it from others, who did see it; by the knowledge of circumstances leaving no reasonable doubt of its commission, or by the admission or confessions of the guilty parties or either of them. In whatever mode the knowledge is acquired the frenzy produced is the same. Will it be pretended that there was in this case sufficient cooling time for passion to subside, and reason to resume its sway? Although the adulterous intercourse commenced in the year 1864, and continued down to the time of Hiscock's death; although it appears now, many eyes had been open to the guilt of the false wife, and her infamous destroyer, yet who was there ever to break the faith of the then confiding husband in his wife's integrity; who is there would ever volunteer to tell the outraged husband of the deadly blight which blasts forever his hopes, his happiness and the manhood of his life.

Where is the man or woman that would ever voluntarily become the bearer of such black and damning tidings to a husband's ears? The evidence will satisfy you that General Cole's absence in the army was made the occasion of this crime, and your own good sense will teach you that after his return home, the infamous secret would be more carefully guarded as to him than to all the world beside. Not until that memorable interview with Mrs. Cuyler, about a week previous to the homicide, had he any cause to distrust his wife, and, then, of nothing more than frivolity or levity of conduct? Not until Saturday, the first day of June, 1867, was it that he received Mr. Pelton's letter, which caused him to suspect for the first time, that his wife had been guilty of *criminal misconduct*. It was not until that fearful meeting on the morning of Sunday, the 2d day of June, that those suspicions were confirmed into realities, and the fallen woman avowed her shame to her wretched husband, fixing the date of its commencement, and revealed then, in disgusting detail, only so much of her subsequent infidelity as she saw fit to disclose; and this knowledge was communicated in little more than *two days* before the homicide, *and this defendant saw Hiscock for the first time after this knowledge on the evening that he slew him*. It is utterly idle, then, to talk about there being time for passion to cool or for reason to resume its sway.

Talk not about its being the duty of an outraged husband and father to forget a wrong of this deadly character; he cannot forget it if he would; his desolated home; his discarded wife; his orphaned children; his disappointed hopes; his disgraced manhood; the vacant chair at his fireside; these are the stern practical realities of his daily life, and by no effort of his will can he banish these thoughts. His overburdened brain must think or cease to beat. Thought has become his master; the more he thinks the more intolerable his thoughts become; and thought is madness. There was no cooling time and there could be none within the compass of a life-time. As often as memory recalled the irreparable wrong, the frenzy of his excitement would be rekindled in all its original and irrepressible fury. The more he contemplated the inconstancy of his wife, the more his reflections must craze and madden him. As husbands, as fathers, as brothers, as men, you cannot but know with what affections the human mind is endowed. Shame,

anger and grief have their abiding place in the human breast. It is for you to say how great must have been their influence on this defendant under the fearful provocation he received. Amid the tumult of such emotions it was not possible that the voice of reason could exert its sway. Where, then, was the free agency of this defendant? Where his powers of controlling his will? Where that deliberation of intent, without which no crime can be committed.

Let any man do to any of you a grievous, irreparable injury, and though years should roll around and in the lapse of time you should have partially forgotten the occurrence, yet let the perpetrator of the wrong appear suddenly before you, and the first sight of him will arouse your feelings of indignation, of anger, or grief, not only in all their original force, but with a tenfold and irrepressible fury. Your experience as men; your own innate feelings will teach you that this is a universal truth, and its recognition will better qualify you to determine the question. What must have been the frenzy of General Cole when he encountered the deceased, seeing him within three days after his wife's pollution was first made known to him! If you recognize the fact that an individual can, under any possible circumstances, ever be thrown back upon his own natural instincts, this is that case. The defendant was impelled to the commission of this act involuntarily and by the instincts of our common nature. It was nature that accomplished the result; let the accusation and indictment be directed against her. When society shall pass laws to punish this monstrous crime of adultery with adequate severity, then and not before let it forbid the execution of private justice. Until the community discharge this duty, the guardianship of the family altar is committed by nature to him who presides over it. And that man who defends the domestic citadel from adulterous assault, will find sufficient sanction for his conduct in the approval of his own conscience, though it should lead him to a martyr's grave.

But I forget, there is a remedy. And the private interest in this prosecution have employed and liberally paid eloquent and distinguished counsel to come here and teach us what it is. The laws of society have, in the judgment of these distinguished gentlemen, provided a sufficient, a perfectly adequate remedy; a safe, certain, and unfailing cure, in their judgment, for

all the rankling and agonizing wounds of degradation and dishonor. When the affections of your wife have been stolen and her person polluted, when your home has been broken up, your prospects in life destroyed, your hopes of happiness blasted, just go to a lawyer's office; it makes no difference whether it is in Tweddle Hall, Albany, or in Wieting Hall, Syracuse; the doors always stand invitingly open in either place. You may enter boldly, the only difficulty you will meet will be to settle the question which side will pay the best. Tell him the story of your wife's disgrace, and make him appreciate, if you can, the sorrows of your broken heart, or the degradation of your manhood; tell him what was the moneyed value of your wife when she gave you the treasure of her affections and committed to your trust the protection of her virgin innocence. He will advise you to make merchandise of her in a court of justice, to have her appraised by witnesses and lawyers, and finally struck off to her seducer at such a valuation in money as a jury of the country may put upon the lost and fallen woman. He will advise you to coin your tears and groans into dollars and cents. And now, gentlemen, pursuing the same idea, I address myself to you as affectionate husbands and fathers of beloved children.

Suppose I say to you in the language of another—"There is one hundred thousand dollars for you—embrace for the last time the wife you love, retire from your house and make way for the adulterer; give up your married bed to the caresses of pollution; wander about the earth a broken-hearted man, the scorn of the worldling and the pity of the good; think no more of the happiness and tranquillity of your former state; true, the adulterer has destroyed these forever, but never mind; don't make yourself uneasy about such small matters as these; here is the money; put it in your purse; there is no better thing in this world than money; when your heart feels sad or your footsteps weary, just jingle the dollars, and their merry sounds will furnish a panacea for all your convulsive sobs. Would you not think I was mocking at the holiest and tenderest passions of your heart, and spit upon me with unutterable scorn and loathing?" Dress up the argument for a moneyed compensation, in what language soever you will, and it will be impossible to put it in such a shape as to sound anything better than an intentional insult to your understandings. I appeal to the

conscience of each individual juror to answer whether he is prepared, for the first time in two hundred years, to sanction by his verdict the abominable doctrine that a moneyed compensation is the only remedy for the bleeding wounds of a broken heart. For the credit of the capitol of the Empire State, let not a verdict go forth from this place that shall say to every libidinous scoundrel in the land, he may safely enter any house he pleases and rifle it of its purest contents, providing only he can pay the moneyed cost of his adultery. Act upon that principle, and you tell every libertine, that if he only foots the bill, he is at liberty to turn any honest man's house in Albany county, into a house of ill-fame for the gratification of his lust, and that in the opinion of an Albany jury, he is exempt from all further accountability, either human or divine.

Or will you not rather follow in the wake of that unbroken line of precedents which has been sanctioned and followed by every jury for the past two hundred years, and render such a verdict that while it accords with perfect justice, shall also be more consistent with the enormity of the adulterer's offence. Appealing to the fixed and settled judgment of the civilized world for my authority, to that calm and enlightened public sentiment, which is the growth of time and experience, and on which generations of men in every rank and station have acted with perfect safety ; I affirm that within the last two hundred years, no man has been punished by any court of justice, either in this country or in England, for slaying the seducer of his wife, his daughter or his sister, when that motive and that alone has prompted the fatal blow. If modern morality has directed no human legislation against the invader of domestic peace and destroyer of female purity, yet the best representatives of enlightened moral sentiment, those *jurors*, who have from time to time assembled in the courts of justice, and been charged to inquire into the guilt of the outraged and frenzied husband or father or brother, have, so far as they could, supplied this defect of duty by adopting as their rule of action, the law of their God, when amid the solemnities of Mount Sinai he thundered forth for all time "Thou *shalt not* commit adultery," "Thou *shalt not* covet thy neighbor's wife ;" "The man that committeth adultery with another man's wife shall surely be put to death."

The voice of God comes resounding to us to-day through the



ages that are past, and tells this court that the verdict of juries which justify the death of the adulterer at the hands of the betrayed husband, are given in obedience to that law of our nature which governs and controls in every human breast throughout the widespread earth. On the great law of public opinion, sanctioned and sustained by the enlightened sentiment of the Christian world, inspired by the teachings of the Great Jehovah, I assert that Gen. Cole is free from crime both in the sight of God and man. And on that great and final trial day, when you and I shall appear side by side with him to render in our account of the deeds done in the body, if there shall be no greater sin recorded against him than the punishment he inflicted upon his wife's destroyer, be you and he assured that he need not fear to approach the throne of the Omnipotent Judge to answer for the conduct of his whole life.

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#### EVIDENCE FOR THE DEFENCE.

At the conclusion of Mr. Hadley's opening, the defence called *Dr. Marcus M. Manley*, who, being sworn, testified as follows :

Reside in Philadelphia; have been a physician there eight years; know General Cole; formed his acquaintance the last day of Dec. 1863, at Fortress Monroe, Va.; he was Colonel of the 2d U. S. Cavalry, just commenced being organized; I was commissioned as Surgeon of his regiment, in which capacity I acted till its disbandment; was with him all the time except two terms of forty days.

What was the condition of his health at that time?

Objected to.

Mr. Brady said the defence intended to show that in consequence of Gen. Cole's insanity or melancholy, that his mind was then and there impaired, and continued so at intervals to the present time; that he was in such a condition at the time of his shooting Mr. Hiscock that he was not morally responsible for the act. The witness treated him for the disease and knew his condition.

Mr. Tremain said there was no evidence presented of insan-

ity, or delusion. The defence have showed that he acted upon what was a state of facts.

The counsel regarded the evidence as to the state of the prisoner's health four years before the homicide, as entirely immaterial.

Mr. Brady said the defence could go back, not only four years, but to previous generations, showing hereditary insanity.

The Court thought the evidence should be received. If the state of the prisoner's mind could not be shown up to the time of the homicide, he would exclude the evidence.

Examination resumed—Defendant complained of ill-health; his injury was an injury of the bowels; he had a protrusion, with constipation and hemorrhage of the bowels; the protrusion was two inches or more at times; stated to me that his horse had fallen on him and crushed his bowels; he complained of great pain; he was subject to long periods of constipation, and then hemorrhage, and copious evacuations; the hemorrhage occurred from ten to fifteen days; constipation from a week to ten days; when not on duty he most always laid on his back in day time; was not fit to do military duty without imperilling his life; I so advised him; the injury to the bowels continued to the time he was discharged, in 1866, and the bleeding gave relief; he complained of pain in the kidneys and suppression of urine all the time he was in the army; his flesh failed; rather declined in health and flesh all the time; the other symptoms increased; I made up no definite opinion as to the character of the injury; the effect on his mind, when lying on his back, during constipation, would make him morose; after evacuations he would be cheerful and jovial; then he would relapse; when ordered to duty, would rise with difficulty, and as soon as this duty was performed would return to his berth; this transaction occurred regularly with the return of the evacuation of the bowels; the gloominess and moroseness, on the whole, increased; in 1864 were on the James river; in '65, June 12, we left for Texas; we went to Brazos; after reaching Texas, during the fall of '65, he was very bad; mind very desponding when he had these spells; sometimes not speaking for half a day; frequently heard him groaning, until finally he had the hemorrhage, a pint at a time; then would continue quite smart; the difficulty operated on him

periodically; I think he inclined towards dementia; have seen the knife presented to the District Attorney (knife produced); think it the knife he carried in his vest pocket; it was an ordinary surgeon's knife; General had a case of instruments; I never saw a man who did business eat so little; he slept very poorly; he was perfectly temperate; he used no tobacco; I left him at Brazos; he was unusually jealous; noticed it in these desponding spells; thought he was not appreciated; never showed that when his health was better.

Q. What is your opinion now as to the general condition of Gen. Cole's mind during the whole time he was in the army?

Objected to. Objection overruled.

A. His condition of mind was some unsound at times; thought so at the time; at one time, for several weeks, he seemed very childish; refer to the time at Dutch Gap, in December, '65, when for several weeks he was constantly whittling little ornaments of no consequence; never saw him do so before; they were little locketts, rings and cases, produced with the knife; they were very perishable; he worked from morning to night, lying on his back; the protrusion of the bowels was of the character of the piles, but the most aggravated I ever saw; I had no personal knowledge of his injury.

Cross-examined—Am forty-seven years of age; have practiced for eight years; was a manufacturer of marble before that; I graduated at the Pennsylvania University, in Philadelphia; studied the profession there one year, in 1859; belong to the allopathic school; understand surgery and anatomy; did not examine the mucous membrane; I knew the mucous membrane protruded; have seen it; never analyzed evacuations; saw them in a jar at Petersburg in August, 1864; gave him simple remedies—alkalies of rhubarb and blue mass; first knew General Cole in Fortress Monroe; he was Colonel, in command of the Ninety-second United States regiment; during the whole time I never knew him off duty; his wife was in the army; she came in January, 1864, and staid till May; she returned again about the time Lee surrendered, and went with us to Texas; she left Texas the first of September; his mind was childish; dementia is a loss of mind; think his mind was diseased; the symptoms were unnatural broodings over fancied difficulties, at these intervals; thought his superior officers did not appreciate him; can mention no other difficulties.

*Lodewick W. Woodin*, sworn—Live in Chili, New York; became acquainted with General Cole in the District of Columbia; was in the regiment with him till the 4th of March, 1863; was with him when injured; a large horse fell on him on the march from Washington, North Carolina, to Swift Creek; the horse went into a ditch and fell on him; he was injured considerably; complained of pummel and handle of saddle pressing on his breast bone and bowels; he was in hospital for a long time in the summer of 1862; could only stay with me a short time; before his injury he was always cheerful; visited him at Syracuse after he left the army; he was not the same man; I was there two days in December, 1866; did not see him again before the homicide.

Cross-examined—I was confined in Third New York cavalry hospital at Newberne, North Carolina; Cole was a captain of Company K, at this time; in December, 1866, he was not so cheerful, and was broken down in health.

*Dr. Emmet Roberts*, sworn—Am a physician and surgeon at Syracuse; have practiced since 1850; graduated at Geneva; knew General Cole there then; we were students of medicine; graduated in the same class; his health was remarkably good; saw him in Syracuse about the time the war broke out; his health then was good; was in good flesh; next met him in the spring or summer of 1863; conversed with him; he stated his case to me several times; he was very much emaciated, sallow, nervous, irritable; eyes bloodshot, the vessels of the eyes injected; complained of constipation; told how he was injured; said it came near mashing him in two; had an injury to the urinary organs also; complained of pain in the bowels, and a kind of paralysis of limbs, loss of appetite and general discouragement about himself; he did not dare take cathartics to relieve this constipation, on account of the protrusion of the bowels; seemed very melancholy, depressed and absent-minded; had a look that would be difficult to describe; kept his hands constantly moving; was very gloomy; spoke of his financial matters in a gloomy way; did not answer questions I asked—seemed absent-minded; would pass me on the street with his head down without speaking; after he returned from the army, he said his bowels had not recovered their natural condition, and that they never would; talked to him about his health up to the spring of '67; had the same condition then—seemed to

be chronic; thought his low spirits gone not to return; think he was a pure case of melancholia; that is considered insanity by writers on the subject; that was my opinion of him before the homicide; an injury to the bowels, liver or stomach, is more likely to produce melancholia, in bilious temperaments, than any other cause; he remarked he would as soon be dead as alive; everything seemed to go wrong with him; a sudden shock to such a man might make him furious, or might cure him; it would produce a greater effect than on a man of sane mind.

Cross-examined—Saw defendant in the spring of '67: can't fix the date; was in warm weather; it was the first I remember of seeing him after returning from Texas; saw him in '63; (witness described various acts of absent-mindedness of prisoner); can give no instance in which he failed to answer me correctly; melancholy and monomania often run into each other; melancholy and kleptomania are about the same thing; can't describe kleptomania; kleptomania is a nervous disease; melancholy involves delusion at times; monomania usually means a mania on one subject; authors differ on the subject.

*Edward R. Fox* sworn and examined by Mr. Mitchell—I reside at Rochester; I first became acquainted with prisoner September 2, 1861, and at Washington; I was a private in his company; I remained with him till May 8, 1863; I returned to him in January, 1864, and remained till October, 1864; rejoined him in Texas at that time, and left him in February, 1866; that was the last I saw of him; he was in excellent health and spirits when I first knew him; he was injured on two occasions, the first in last of summer of 1862; he then went into hospital; think he left in last of November or first part of December, 1862. He received the second injury by his horse stumbling in the night; I was a personal orderly under him; the horse fell upon him across the breast; he left for home on sick leave. He was frequently delirious and costive; was costive for two or three days, and bowels were then moved by medicine; there was hemorrhage of the bowels generally upon evacuation. I next met him in January, 1864, at Fortress Monroe. He was then in fitful spirits, sometimes jovial and at others melancholy; had to remain in his tent at times from affection of breast and costiveness; he continued so till last of October; at times, when apparently jovial, he

would become melancholy ; would leave the room ; the constipation was fitful from January to October ; I never knew him to be excused from duty ; he frequently did duty while he was sick ; I met him at Texas, in October, 1865 ; found him to still be in fitful moods, jovial at times and then melancholy ; his dejection would continue for one or two days ; his health was poor ; his constipation continued ; his melancholy was more frequent and lasting. In June, 1864, he was completely prostrated and was sick for two or three months. He was always on duty when an order came. I have not seen him since till now.

Cross-examined by Mr. Smith—I am 24 years of age ; am manufacturer of boot patterns. Both injuries were by the falling of a horse. He was cheerful when he was well ; when sick he was melancholy and dejected ; I have tried to make a communication to him when I was unsuccessful, but I never attempted to speak to him on business while he was in that mood. He was in command of a regiment while we were on the James River.

*Frank B. Garrett*, examined—I reside at Syracuse ; am 24 years old ; in the paper business. First knew the prisoner in August, 1862, at Syracuse. I recruited some men and joined his company ; prisoner was home at that time. I joined him at Newberne, North Carolina. I joined company as a sergeant. I remained with him a year. I rejoined him in January, 1864, at Fortress Monroe. He was affected by his injury when I joined his company ; he often complained of it ; he would lie in his tent very weak and suffering from pain ; sometimes affected after a march ; much disturbed in his sleep ; would get up and walk at night. In the spring of 1863 we made a raid in the direction of Weldon. We were 54 hours in the saddle with but one hour's relaxation. At conclusion of march prisoner fell from his horse and made great complaint and suffered severe pain ; after he fell from his horse I found him lying asleep on the ground ; he remained in camp for some time sick and suffering pain.

Q. What was the condition of his mind after this march ?

Objected to, unless the witness be confined to statement of facts.

Objection sustained by the Court.

He could not mount a horse till two months after the raid.

In answering my questions he appeared very childish, and at times would not answer my questions, and some answers would be foreign to the subject ; his mind did not appear to rest on any particular subject. He would be jovial and then speak of duties in the camp. I after that, in fall of 1864, saw him at Norfolk ; remained with him during most of the winter ; his general health was good, but he suffered from his injuries ; then left camp and went to his hotel ; this was frequently. At one time he laid with his head lower than his body ; his strength was prostrated. I went with him to Texas. His ailments continued there. He did not perform any active duty there. I came home a week before him. The prisoner frequently called at my store after our return. I noticed that he had lost that jovial hearty disposition that he had in the service ; he would sit still in my store and not speak, and I would have to arouse him ; he would walk out abruptly ; spoke of different projects that he had, when about to go ; his mind was unsettled as to what he would do ; was often despondent, but would not tell why he was so. He said his wound had used him up so that he was of no more good to himself or family. He spoke highly of Hiscock once or twice while in the service. I do not know whether or no they were friends.

Cross-examined by Mr. Sedgwick—Prisoner had been in Syracuse but a few days when I first knew him, in August, 1862 ; he stayed there two or three weeks ; he was then suffering from a bullet wound in the leg ; otherwise he was well ; it was an accidental wound. Prisoner was captain of my company when I first joined it ; he was promoted before I left the company ; we were about Newberne, N. C. ; he was in command of his company till he was promoted ; he was never absent from his command as Major ; he was in the hospital for several weeks, but I don't know his disease ; I understood he had fallen from his horse before I joined, in August, 1862, but don't know when it was. While at Newberne prisoner had command of the company and did duty, except once, when he was ill on account of his injury. In the fall of 1863 I joined another regiment ; both regiments camped near together ; I was then a lieutenant ; I remained with that regiment at Fortress Monroe till May ; then went to Bermuda Hundred ; I think the prisoner commanded

the brigade ; were not on active duty ; did guard and provost duty ; remained till August under prisoner's brigade command ; saw him, perhaps, once a week ; often had business with him ; never saw him unable to do business except once or twice, when he was confined to his camp ; he referred me once to his Adjutant.

I never stayed with him over night at his tent or his hotel ; I was appointed on his staff in May, 1865, and remained till January, 1866 ; were in Virginia, till July, when we went to Texas ; in Texas, I never occupied the same tent or house with him ; I visited him at his quarters at Fortress Monroe ; I cannot state the conversation ; saw him once at Captain Ellis' tent ; nothing occurred ; saw him once at the Adjutant's tent ; I went to Texas on the same vessel with him ; his health was good on the passage ; I did not hear of his hunting wild cattle on the plains in Texas ; his health was generally good, these attacks were exceptions ; I was in tent at different occasions ; one attack lasted two weeks, but he walked about ; I don't remember anything said between us during that illness ; that was about a week after our arrival ; three weeks after, he had another attack ; the day after our arrival I had conversations with him, but don't know what they were ; once he said he still had his injuries ; I cannot now remember any other particular conversation while in Texas ; during the said raid of 54 hours, before spoken of, I was with the prisoner part of the time ; as near as I remember, it was in the spring of 1863 ; were attacked in the night, and retreated to Newberne the next morning ; saw prisoner that day at his quarters ; he spoke of his injuries ; can't tell any more said ; saw him again within a week.

After this raid, I remarked the condition of his mind that I have spoken of ; I cannot give any conversation from which I determined it ; it was from two or three conversations ; I cannot give the exact words used ; can give the substance of one conversation ; I spoke about a muster roll ; cannot give his reply ; it turned on several matters ; I cannot tell any of them or what the prisoner said ; I cannot tell what the next one was about or what I went for ; I can give subjects but cannot tell the time ; I cannot give the conversation, only the subject ; I now remember that he once said he wanted to write a letter, but did not feel able to ; I cannot state any



action of his from which I determined the condition of his mind ; once in Texas I saw him when he was in apparent good health, but was not jovial ; I cannot give the occasion ; after our return home to Syracuse, he was employed in the Empire Wind Mill Company ; it was some time after his return ; he was in that employment for several months ; he often called at our store during that time, and sometimes on business ; I cannot say he was detained from his business during that time ; at one time he came into the store during the winter, sat down and conversed ; don't recollect what it was about ; he spoke of changing his business ; had thought of going to California, and then of going to Washington ; he also said his injuries still affected him ; he said he passed many sleepless nights ; said he was unsettled ; I asked several questions that he did not answer ; I cannot give my questions.

After that, in May, I conversed with him in my store. I struck him on the leg ; he said I must remember that was the wounded leg (by pistol shot) ; he said he wished it had been higher up, and he would now be asleep under the sod of Virginia. That was all I recollect. From this and others I had noticed he had lost his jovial disposition.

*Joshua Rogers* examined by Mr. Mitchell—I live at Syracuse ; have been a druggist, and have been in the Government employment ; am in no business now. I first knew the prisoner in 1860 ; he seemed to be a healthy man and of good spirits. I saw him once during his term of service. Met him on his first return. I discovered that he had not his usual spirits ; seemed to be melancholy. I thought it grew upon him. I saw him in March or April, 1867, at Washington ; found him at his room at hotel, lying on the floor ; he had wet towels between his limbs ; was groaning a good deal ; he said his bowels were protruding. I staid half an hour or more. He said he did not care whether he lived or died ; he thought it would kill him. Said he was thankful for the efforts of his friends in his behalf. He had another attack in two or three days, while we were at the Capitol. He laid upon a sofa ; was apparently in agony ; laid so an hour and a half ; he groaned and was faint when he got up. I took him to his hotel and he went to bed ; I saw him at Syracuse after his return ; he appeared down-hearted ; said the efforts made

for him were useless, as he did not expect to live long ; I tried to cheer him up ; the expression of his countenance was very sad ; said he could not walk well ; he has a wife and two daughters, the latter 13 and 15 years old ; friendly relations existed between him and Hiscock.

Cross-examined by Mr. Mitchell : I had before heard of his physical trouble ; I corresponded with him often during the war ; I went to Washington partially for him, to obtain an office for him ; I took a good deal of interest in the matter ; we stopped at the same hotel ; he sought the appointment of Assessor of Internal Revenue ; he did not call the attack the piles ; I did not examine his person ; I did not see much of him during his employment at the wind mill ; I only saw him at one time during the war ; I left Washington in two or three days after his second attack ; don't know how long he staid there ; before I left he had given up hope of getting the office ; after that I was appointed to a Government office as a detective ; held it up to some four months since ; I have taken some interest in this case ; I don't know that the prisoner had any business after the war, before his employment at the wind mill ; have had conversations with him—once about business—up to leaving the wind mill ; I knew Mr. Hiscock's family ; he has a daughter 17 years of age, and a boy.

Direct resumed by Mr. Mitchell—Hiscock was, I believe, a widower.

*Guy Davis* examined by Mr. Mitchell—I reside at Syracuse, and have resided there twenty-five years ; first knew prisoner in May, 1866, after he went to the wind mill ; I had one or two conversations with him about his experience in the army ; I thought I discovered something singular in his appearance ; there was a good deal of nervousness and excitement ; his eyes were very peculiar, such as I had never seen before ; they seemed to be bloodshot and singular. He described one or two engagements he was in, and spoke of an injury he had received from the fall of a horse. He was restless in his manner. His countenance was flush and his cheeks were red. There was a twitching in his hands in describing his deeds ; I noticed it more the first time than I did the last. He was invited into the shop, but stopped and went off.

Q. Did you make up your mind at that time that he was sane or insane?

Objected to, and upon the ground that witness might state facts, but not being an expert, cannot give his opinion.

Question changed to, "Did you, at the time, from his speech and conversation, acquire an opinion as to the condition of his mind?" A. I did.

Q. What was your opinion?

Objected to, and objection sustained.

My impression at the time was that he was irrational.

Cross-examined by Mr. Sedgwick—My first conversation was in the wind mill; I think I went there on business; I had never seen the prisoner before; I asked him about his war record and if he was willing to give it to me; he said he was willing; I wanted to know what he had done as an officer; he said he was in command at the South, had made raids, and been in dangerous places; said he had come out apparently sound; then he said he was thrown from his horse and wounded in his side; that was the main portion of the conversation. He described two or three fights, and seemed to be very irritated. Said he had been sent out by Gen. Butler, was intercepted by the rebels, but had got out and had recovered a colored man that he thought a great deal of. I cannot say that raid was the one he was hurt in. I think it was another where he was hurt. I cannot describe that. His horse fell in a battle, while he was pursuing a retreating man and trying to cut him down.

The next conversation was a week or two after; was talking with prisoner about mills. I thought his going out, as I before stated, was very irrational; I thought his story before, of his war record, was also irrational, not his statement, but the mode and manner of stating it; I don't know that I can state more than I have that seemed to be irrational; I think he used more gestures than some would; he did not speak very loud; his peculiar manner was a wildness of his eyes, a bloodshotness and nervousness; I thought he was an insane man; did not think he was fit for a lunatic asylum; I formed that opinion the more from the first conversation. I am sixty-six years old.

*Godfrey Weitzel* examined by Mr. Mitchell—I am an officer in the Regular army. Am major of engineers, and now stationed at Cincinnati; I was during the whole war. I commanded the 18th and 25th corps. I knew the prisoner. He was under my command on the 18th May and till I was mus-

tered out of service. The 18th corps had 12,000, the 25th corps had 27,000 men on the returns; I had noticed the prisoner lying peculiarly with his hands behind his head; saw him so twice; he jumped up quickly and nervously. I went to Texas ahead of him; was not near him there; we were about thirty miles apart. I knew nothing of his injury. In Virginia he commanded a brigade; our quarters were half a mile and a mile apart. I considered him a perfect gentleman. His character was first rate.

Cross examined by Mr. Tremain: I first formed his acquaintance in May, 1864; the last business I had with him was in February, 1866; all I know of his character was while I was in the army; I never knew him to be disabled, but always doing his duty; he always had a sort of morose, dissatisfied look; I saw nothing to make me think he was at all irrational; I supposed he was dissatisfied about what had been done in the matter of dismounting his regiment; I thought that might be the cause.

*George Raynor*, examined by Mr. Mitchell—I live at town of Onondaga; I knew the prisoner before he went to the war; he lived opposite to me for a while; I saw him once or twice during the war; became well acquainted with him after the war; I noticed a peculiar absence of mind, a wandering unsettled manner; have met him when he would not recognize me; thought he was much dejected at times; he always complained of his injuries; I thought his dejected appearance increased; he was disinclined to talk; he was in the habit of making neighbor boys play with him in the barn; I first noticed the conduct spoken of after his return from the war; I thought he was a different man; I noticed a sadness and want of concentration of mind, walking about in the yard, &c.; I thought his acts were not rational, and the impression on my mind was that he was not rational.

*George Raynor*, recalled and cross-examined by Mr. Sedgwick—Mr. Cole took possession of the house about the middle of September; before Col. Cole went to the army I had a business acquaintance with him for a year or two; not largely; remember his being home when our 12th Regiment returned, in March; his occupation was about home; building a barn and fixing up the yard; Gen. Cole is not generally social: was so with me; remember no one thing occurring that year that gave

me the impression in regard to his mind ; he was fit to attend to his ordinary affairs; don't think he saw me when he passed me without speaking; this occurred several times; he wandered and had an unoccupied appearance; saw him two or three times a week; he was not inclined to talk much with the children; I noticed nothing incoherent in his talk; never heard him complain on any other subject but the pain from the wound; he used to stand alone at Globe Hotel for a long time; one time nearly an hour; don't know what he waited for; did not see him talking to anybody; might have done so; don't know that these circumstances indicated he was crazy; never thought he should be taken care of; thought he knew the difference between right and wrong; and that if his health was restored he would be restored to good spirits.

*William C. Fink*, sworn and examined by Mr. Mitchell—Reside in Syracuse; am a banker; have known General Cole intimately ten years; previous to enlisting he was in fine health and spirits; after that I saw him at home; he was very greatly changed; his appearance was exceedingly strange; I once stopped him and asked him why he passed me without speaking to me; he said he did not know he had; complained of his injuries; he seemed to be tortured; his eyes were wild, this was in May, 1867; said there was a great pressure on his brain, and that it was occasioned by the state of his health; we were neighbors and friendly; first noticed the change soon after he returned; saw him once at the Syracuse House, when the appearance of his eyes attracted me; this was shortly before May; he looked badly; his face seemed vacant; except two or three times, I think, he always failed to recognize me; prior to this I met him at a concert in the winter or spring of 1867; my wife and I met him and his wife and Mrs. Cuyler, and took a seat in front of us; he looked at me and did not bow; his manner was very strange; I spoke to him; he did not converse much; saw defendant in New York about the first of June, 1867; I was talking to a gentleman; Gen. Cole passed and looked right at me, but did not speak to me; he rubbed my elbow and shoulder as he passed; he went into a revenue office; his appearance and manner were so strange that I was impressed with it, and intended to follow him in, but found on looking at my watch that I had not time and passed on; am positive he saw me; I certainly thought he was an irrational

man, it was so different from his usual manner before he went into the service; I am a banker at Utica; my family reside at Syracuse.

Q. What were Gen. Cole's relations with his wife and children. Objection sustained.

Cross-examined by Mr. Sedgwick—Before the war I lived at 56 and he about 66 West Genesee street; knew him when he began the lumber business; I was in the hardware business; I continued in that until the summer of 1865; I was Treasurer of the Syracuse Savings Bank when the war broke out; his wife kept an account there; I left there about the close of the war and before Gen. Cole came home to stay; my health was the cause of leaving there.

Q. Didn't they claim you were a defaulter?

No sir, I wish you to distinctly understand that.

I resigned in October, '66; had differences with the trustees; the bank was indebted to me over \$15,000; I differed with them as to management; (witness explained his differences with the bank; failed as a hardware merchant;) I wish you Mr. Sedgwick, to understand that my affairs in that bank are all square; don't know whether Gen. Cole refused to speak to me on this account; he afterwards apologized for not speaking to me; his eyes were very red; think that was in May '67; at the concert I called his attention to me by putting my hand on his shoulder; he seemed ill; talked with him several minutes about army operations; the concert was in the spring of '67; previous to this had met him once or twice; he recognized me politely; (witness here became very indignant at Mr. Sedgwick's alleged attempt to attack his character); may have met with Cole before and talked with him.

Counsel here examined the witness at length as to his reasons for concluding Gen. Cole of unsound mind.

Re-direct—The witness here made a full explanation in regard to his connection with the bank, saying he found it \$30,000 in debt, the Mechanics' Bank bleeding it to death, and left it with \$100,000 surplus.

*De Witt C. Worden*, sworn—Reside in Syracuse; saw Gen. Cole after his injury; gave him a prescription. Witness described the symptoms.

Cross-examined by Mr. Smith—Nothing of importance elicited.

*Ransom Green*, sworn—Examined by Mr. Mitchell: Reside in Syracuse; knew Cole in the banking business in 1859; have been a clerk in the office of Dr. Shipman; the first I noticed of the change in Cole was on Sunday morning before the homicide; I was in the Jervis House, in the hall; while I was waiting at the head of the stairs a girl came and rapped at Cole's door; he came to the door and I looked at him in astonishment; his eyes were red; looked as if he had been weeping; I asked him if his family were sick; he said no, and retired to his room shutting the door; I felt bad about it, thought he had gone back on me; it was about 9 A. M.

Cross-examined by Mr. Sedgwick—I was assistant weigh-master last summer; have done nothing this winter; this occurred on the first floor; I stood at head of the stairs; he was not fully dressed; thought he was crying; saw no tears or sobs; it was light in the hall; his room was dark; he stood there from a quarter to half a minute.

*Peter Burns*, sworn and examined by Mr. Mitchell—Resided in Syracuse thirty-three years; knew Gen. Cole ten or eleven years; he was always cheerful till his return from the war; then noticed a marked change in him; from a cheerful and genial person he seemed sad and dejected; it was very marked; this was in the fall of 1866; saw him frequently; had but one general conversation with him after his return; his appearance to me was very mysterious.

Cross-examined by Mr. Tremain—Had business with him before the war, and met him in society; not intimate with him; his conversation at the time referred to was coherent; wanted me to assist in getting him employment; did not see anything irrational then, or at any previous time; saw him at the Arcade in the fall of 1866, for five or ten minutes, when he was dejected; had no conversation with him; was walking back and forth in a meditative mood; soon after that he got employment; saw him after that at public meetings.

*Martin Madison*, examined by Mr. Mitchell—Live in Syracuse; first knew Cole in lumber business; saw him in New York just before the homicide—one or two weeks; saw him in Sweeney's hotel; called on him; he was in the restaurant; went up to him; stood by him, he did not notice me until one or two minutes; he appeared abstracted; four or five waiters were looking at him.

Cross-examined by Mr. Tremain—We were both in the lumber business; had dealings with him 'once or twice; had no dealings with him after the war; we met once in a while in the streets; had two or three conversations with him; I thought him always eccentric; I invited him to dine with me in New York about a week before I saw him at Sweeney's; saw nothing about him except the ordinary eccentricity; I did not speak to him at Sweeney's until he spoke to me; he asked me how long I had stood there; I said two or three minutes; he said he did not see me; I was a little behind him; I had a conversation with him; noticed nothing unusual for him that he said or did.

*Elizabeth Wyman*, sworn and examined by Mr. Mitchell—I reside at Syracuse; I boarded at the Jervis House last June; my mother, Mrs Lee, also boarded there; I know prisoner by sight; knew Mrs. Cole very slightly; they came to the Jervis House to board on the 1st of May, 1863; my room was on the same floor, two rooms off; I knew prisoner before that by sight; I did not see him on Sunday before the homicide; saw him at dinner on Monday; one or both of his daughters were with him; dinner hour was from 12½ to 2 o'clock; I did not observe that he eat any dinner; his singular agitated manner attracted my attention; his face was red, his eyes looked very red, looked exceedingly careless in his dress; to give my general idea, I supposed he had been drinking; he sat at the head of one table; he folded his arms and leaned upon the table; he appeared indifferent to everything about him; his daughter spoke to him; his hair was very much out of order; he smoothed his hair, and at once left the dining-room; I think he did not speak to any one; I did not see him give any order for dinner; his dress was somewhat careless at all times; he went out alone from the room; I had not then heard of any trouble in the family; he was in the dining-room perhaps not more than ten minutes; his appearance struck me at the time; he did not stagger as he walked; the expression of his countenance was horrid.

Cross-examined by Mr. Tremain—I had boarded there a year and a half; I think I first knew him the winter before at a bazar; the prisoner at that bazar performed the part of an Indian character; while at the Jervis House he was at home on Sundays, was away during the week on business, as I supposed; his children occupied rooms on another floor; on the



week before the 3d of June he appeared as usual, and I had discovered nothing unusual in his appearance; there were quite a number of persons at the dinner; he sat at his usual seat at the table; I don't know that there was anything unusual in his dress; had on the usual articles of dress; had no collar, but coat and vest as usual; I was attracted by his perfect indifference to what was going on, and his abstractedness of manner; I did not think his face looked as if he had been weeping; his eyes were of the ordinary bloodshot appearance; he smoothed down his hair when his daughter, as I supposed, spoke to him; he was not in the habit of talking very much at the table; he is not a neat and precise man in his dress; there were ladies dressed in Indian costumes at the bazar.

*Harriet D. Lee*, examined by Mr. Mitchell—I reside at Syracuse; I boarded at the Jervis House; knew the prisoner by sight; I am mother of Mrs. Wyman; I remember the Monday spoken of by her; my daughter asked me to observe Cole; he seemed to me as if he was intoxicated; he looked as persons do who are intoxicated; his eyes were very red, his face bloated, the back part of his hair stuck up straight; he crossed his arms and leaned upon the table; I did not see him touch a knife, or plate or anything; did not look down, but forward; the expression of his countenance was rather a horrid expression; he got up and left the room; he did not stagger; I don't think he eat anything; I did not see him at the table on the day before Sunday, nor at the breakfast on Monday; one daughter was with him—perhaps both; I did not see Mrs. Cole at her meals on that day or the day before; did not see her out of her room; they usually took their meals at the same hour I did.

Cross-examined by Mr. Tremain—I first knew Cole by sight at the bazar in February; I was not intimate with Mrs. Cole; was in the habit of passing time of day with her; was no public parlor in the house; I saw his daughter whisper to him, and then he put his hair down; I had not seen the daughters at meals on Sunday or at breakfast Monday; after the first week of their boarding, he was only in Sundays and Monday mornings.

*Rowland M. Hall*, examined by Mr. Mitchell—I am a lawyer in New York city; was in the service for about one year; had an acquaintance with the prisoner; saw him after the war was over, in May, 1867, in the street in New York; he

talked about what he had been through in the army ; I noticed something wild and singular about the expression of his face ; different from what I had seen before ; what I should call a dark, unsettled, pre-occupied expression ; had a sad, abstracted, dark look ; it impressed me very forcibly at the time ; we talked of nothing but about the war ; it was a very few days before the homicide, and I think within a week before.

Cross-examined by Mr. Tremain—We belonged to the same regiment, the 3rd New York cavalry ; we were frequently brought together in the field and in camp ; I discovered nothing peculiar in his deportment. I do not know that he suffered in health more than all of us from our hardships. I saw the prisoner about the first of January, 1865 ; I only shook hands with him ; I discovered nothing unusual then. At the time I met him in May, 1867, we were in company about ten minutes ; I first asked him about his Texan experience ; he made a reply, speaking in praise of his colored troops, and particularly of their courage. We both spoke in praise of our own regiment ; there was nothing incoherent or disconnected in the conversation. His countenance is generally pretty dark. He was entirely rational, so far as I could discover ; the conversation was mainly on my part ; it was kept up the whole time we were together ; his manner was as though something heavy was upon his mind ; there was a dreamy abstraction, but he kept up the conversation. He promised to call upon me, in answer to my invitation. He said he was an officer of the government, connected with the Treasury Department ; I cannot fix the precise date of that conversation ; do not remember the day of the week.

*James O. Hutchison*, examined by Mr. Hadley—I reside in Brooklyn ; am in the insurance business. On Saturday, 1st of June last, I was in the United States naval service as a mate ; before that I had known the prisoner in Syracuse very slightly. On the Saturday named I met him in the Hudson River depot in New York, between five and six P.M. ; I travelled in the same car from New York to Poughkeepsie, and sat on the same seat with him ; I noticed nothing particular at the depot ; I saw the prisoner in the car, and he was writing ; was writing in what seemed to be a diary ; I sat by his side on the seat ; did not speak till after the train started. I found it difficult to engage him in conversation ; he several

times pressed his hands against his forehead ; he said he did not expect to live long ; I asked the reason, but he gave none. He stood up in his seat for some minutes, and pressed his hand against his forehead. At Poughkeepsie I took another seat so that I might lie down ; the prisoner went to the platform and was gone fifteen or twenty minutes, and while the car was in motion. After that he went out again on the platform ; I went out and saw him there ; I think he had no hat on ; his manner appeared very strange, and therefore I followed him to the door ; he stood there at that time about half an hour ; I went and saw him there, and went back to my seat again ; don't know that I saw him come into the car ; I do not remember of seeing him after that ; I noticed that the expression of his countenance was very sad ; it was dark in the car.

Cross-examined by Mr. Tremain—I left the naval service in June last ; went into the service in 1862, and as a midshipman ; had been at the naval academy, but did not graduate on account of sickness ; I had lived in Syracuse ; first knew him there in 1860, and from then till he went into the service in 1861 ; I did no business with him in Syracuse but once, to take a telegraphic message to him as messenger ; I was not at all intimate with him ; I had no business dealings with him after he had left for the war ; I did not see him from that till a week before the time spoken of, viz., in May, 1867 ; that was at the St. Nicholas' Hotel ; I am 23 years of age ; met him in the public hall of the hotel ; I merely passed the compliments of the day with him ; can't tell anything he said ; I made myself known to him ; I think it was on a Sunday ; he did not recognize me at first ; I discovered nothing unusual in his appearance then. When I saw him on June 1st, I first saw him in the sitting-room of the depot ; I spoke to him ; I asked him how he was ; he gave me an answer, but don't recollect what it was ; I was with him but a moment, and noticed nothing particular ; I think he called me by name ; I next saw him sitting in the car, some fifteen minutes after ; he sat about the middle of the car ; I sat on the seat with him till we got to Poughkeepsie ; I don't remember the first said between us ; I asked if he was unwell ; he said his head felt strange ; he said he did not expect to live long ; I do not remember anything else, except that I remarked about what I had seen in

Europe, comparing its general appearance with this country ; cannot tell which I said it was most favorable to ; cannot tell anything else said ; I have stated all I can remember ; he first went on to the platform, before we got to Poughkeepsie ; I should judge it was dark ; nothing passed between us when he returned, that I can remember ; he appeared uneasy ; I don't recollect whether he or I got out at Poughkeepsie, at the refreshment saloon ; either then or after, I took another seat.

I arrived at Syracuse at six A. M. ; don't recollect of seeing him after I saw him second time on the platform ; that, I think, was north of Poughkeepsie ; did not see him go out on the platform ; I was laying down ; it was pretty dark ; I went to the door ; I missed him from his seat ; I looked through the window and saw him on the platform, and then I returned to my seat ; he was out about half an hour ; did not see him come back ; I am not aware of the fact that I saw him after that in his seat ; I did not see him after that ; I do not mean that I thought he was gone half an hour before I went and saw him on the platform ; I do not know but that he had gone into another car ; I do not know but that I might have said that I had no idea of the prisoner being insane ; I don't remember whether on my direct examination I said I saw prisoner return to his seat.

Direct resumed by Mr. Hadley—After I had seen him on the platform I looked and did not see him in his seat.

*Amos B. Smith*, examined by Mr. Hadley—I reside at Geneva ; I am a practising physician ; have known the prisoner from his childhood ; he studied in my office at Ovid ; I knew him quite intimately since then, which was in 1851 or 1852, till he entered the service ; I knew of his entering Geneva College ; I knew of his commencing practice at Trumansburgh ; I knew Mary Bartow ; I should class the prisoner as of a nervous, sanguine temperament ; he is ardent, impulsive, acting with very great quickness, of a kind disposition toward others ; I know the members of his family ; I only personally know of the insanity of one member of his family, viz., Miss Martha Cole, his sister ; I attended her professionally ; that was while prisoner was studying in my office ; I have not seen much of the prisoner since his return from the army.

Cross-examined by Mr. Tremain—I moved from Ovid to

Geneva 14 years ago ; prisoner was born near Ovid ; he was from 21 to 23 years old when he came to study with me ; our families were intimate ; he was with me about a year in all ; from Trumansburgh he went to Havana, but don't recollect when ; he went from Havana to Lodi ; I cannot tell how long he was at Lodi ; thence he went, as I learned, to Syracuse ; was in the habit of seeing him two or three times a year ; I never saw any display of his temper or passion ; never saw him in anger ; he was quick in his impulses and movements. His sister was not married when she was insane ; I do not know whether she has become married ; she was about 17 or 18 when I doctored her ; I visited her twice, as I remember ; she lived eight or nine miles from my residence ; it was a case of what physicians would call *hypocondria* ; it took with her the impression that she had a fatal, incurable disease ; I cannot tell what I prescribed for her ; she had had visits of another physician ; should say it was Dr. Townsend, who is now living ; she was in a state of nervous prostration, no organic disease ; I cannot tell how soon she recovered ; the prisoner was then in my office ; I should judge it continued several months ; I have not heard of a recurrence of the disease ; I saw her after that ; she had improved ; I think it was in the region of 1851 ; I cannot tell how many times I have seen her since ; shall say it was as many as half a dozen times ; I have never heard of her death or insanity.

I do not remember the conversation I had with the sister at either time I saw her ; I cannot state anything she said ; the particulars or substance of anything she said ; I now say that I do remember the substance of it ; she said she had an incurable disease, and should never recover from it ; she did not say what it was.

*Edmund B. Cole*, examined by Mr. Parker—I am a nephew of the prisoner ; reside at Lodi ; saw him on the 3rd of June ult., at his room in the Jervis House ; Mrs. Cole, both daughters and Mrs. Cuyler were there ; it was on Monday, in the afternoon, between five and six o'clock ; I asked prisoner how he did ; he said he was not feeling very well ; in shaking my hand he seemed to be nervous and excited ; his eyes looked wild ; his appearance was wild and convulsive ; much twitching of the muscles ; in answer to me he said he was going on the morrow to take his wife to Brooklyn ; he was

very jerking and convulsive when he answered ; had his hands folded behind his head at times ; never saw him have such a wild appearance before that ; he spoke about his head ; sprang up hastily, and went into the other room ; I did not see him again till last Tuesday ; this was the day before the homicide.

Cross-examined by Mr. Tremain—I am a telegraph operator ; was employed at Syracuse last year ; left in June and went to Ovid ; I went there to call on my uncle's family ; I was there about an hour ; prisoner was there about half an hour ; he sat in a rocking-chair ; I asked him how he was, and he said he did not feel well ; I then asked him when he was going away ; he said he was going on the morrow ; I asked where, and he said to Brooklyn ; nothing farther just then ; in a few minutes he jumped up, said something about his head, and went into the bed-room ; he remained in the rocking-chair till he went out ; his body seemed to be convulsed when he spoke ; his eyes looked dull, and would flash up when he spoke ; they were red ; his face looked very haggard ; I mean by that it looked very flush and red ; that's all I mean ; the muscles of his face seemed to jerk as though his cheeks throbbed ; his body seemed to jerk ; had his hands behind his head considerable of the time.

*J. Marcus Rice*, examined by Mr. Brady—I am 40 years of age ; live in Worcester, Mass. ; am a physician ; been such since 1854. I entered the service in July, 1861 ; first did camp duty, and in September, 1861, became connected with 25th regiment Massachusetts ; I became acquainted with the prisoner in summer or fall of 1862, at Newberne, N. C. ; his wife was there during the time of my acquaintance : my wife was there ; we interchanged visits.

The prisoner was a very gentlemanly man, kind and affectionate ; more so than most men ; was genial in disposition ; seemed to be fond of his friends and family ; I was captured and taken prisoner, and next saw him in February or March, 1864 ; then saw him at Portsmouth, and saw him frequently ; he did not appear to be in as good health or spirits as when I saw him in North Carolina ; I had heard of the injury in North Carolina by the falling of his horse ; I next saw him in May or June, 1864, at Petersburg, and occasionally during that season, up to January, 1865 ; at Petersburg, he was

sallow and seemingly not in good health ; he was reticent and reserved ; appeared depressed and melancholy ; he was not companionable ; he did not return my visits ; I don't think I then became acquainted with the nature of his illness ; it is my impression he did once tell me of it ; he said he had difficulty of breathing and protrusion of the bowels ; I had heard it in other ways ; don't think I heard him speak of hemorrhage ; I never was consulted professionally by him.

I saw him in the Spring of 1835 ; he was then at Peterburgh, much depressed ; I am frequently called upon in my practice to visit insane persons sent to the Insane Asylum ; melancholia means a melancholy disposition ; is a species of insanity : it becomes so from taking a disheartening, desponding view of things ; it is more unreasonable and unreasoning than common melancholy ; it is very commonly caused by diseases of the viscera, stomach, bowels and generative organs ; I heard Dr. Manly's testimony. (Statement of the Doctor's testimony showing assumed bodily condition of the prisoner read to witness.)

Q. In view of such a state of facts, what would you say as to the condition of his mind, as being unsound or otherwise ?

A. I should say he was of unsound mind, of the particular form of insanity called melancholia ; the effect of a great domestic calamity upon such a man would, in my opinion, be very likely to dethrone his reason ; the effect would be increased if he should suddenly come upon the man who was the cause of such a domestic calamity.

There is such a state known in the medical faculty as "insane impulse," created by some sudden cause arising in the mind ; a man purchasing one or more pistols would be consistent with melancholia, but not with "insane impulse," if purchased at the moment ; it would to me indicate a more probable intention of suicide ; a person afflicted with melancholia is generally indifferent to life ; the insane impulse would be more likely to be excited by an hereditary disposition to insanity.

Cross-examined by Mr. Tremain—He was with me at Newberne more than a year ; his first injury was while he was there, and about a year before I left ; he was pleasant and social all the while ; I do not know of his being confined by illness during that time ; I next saw him from February to

May, 1864, three or four times, an hour at a time ; he was then rational and intelligent, but not as much inclined to converse ; he said nothing that led me to suppose he was gloomy ; I found him at his duty at all times, and never in bed sick.

Dr. Rice recalled and cross-examined by Mr. Tremain—Saw Mr. Cole at Portsmouth ; next saw him at Bermuda Hundred in May, 1864 ; found him rational ; the reserve and abstracted manner continued ; saw him again at his camp near Petersburg, in May or June, 1864 ; was rational in conversation but more reserved and melancholy ; saw him next on the north bank of the James River, in the fall or early winter of 1864 ; saw nothing peculiar then except as stated before ; saw him again at Gen. Butler's headquarters that winter ; can't relate conversations ; saw him in the spring of 1865 ; saw him twice at Norfolk ; I asked him about his family and his expedition to Texas ; did not see him again until Thursday last ; he was gloomy, dejected, &c. ; I did not in these interviews believe he was insane ; I now believe he then had a tendency to melancholia ; don't know that medical writers treat a tendency to melancholia as synonymous with melancholy ; it is a species of insanity, also of monomania ; it is treated as synonymous with monomania ; think Dr. Ray and Dr. Beck so regard it ; think Ray speaks of melancholia as monomania ; the latter is regarded sometimes as a mania on more than one subject ; have never made insanity a specialty ; my official position frequently requires me to see insane patients ; have no official connection with the insane asylum ; insanity is unsoundness of mind ; a perversion of its powers, and frequently of the feelings and affections ; it is very difficult to define the exact limits between a sound and unsound mind ; it is such a state of the loss of powers of the mind over the will whereby a person is not responsible for his acts ; I do not quote ; think Beck so describes it ; delusion is not always a test of insanity ; in answering the question put by Mr. Brady, I did not include the test of delusion as necessarily connected with this case ; did not consider delusion as having any connection with this question ; a person may be insane without delusion on some subjects ; think the defendant had delusion in regard to his friends as referred to in Mr. Brady's question : delusion is an idea that things true are not true ; the converse of the proposition is another delusion ; can be a



delusion as to a fact existing which does not exist ; there may or may not be delusion whether facts do or do not exist ; melancholia may exist without delusion, as in cases of physical disease ; I assume all the facts stated in Mr. Brady's question to be true ; insane impulse is spoken of I think in Wood's Practice of Medicine ; am not certain in what other books ; every person having an insane impulse must be insane at the time ; it is an irresistible influence over the will ; it expends itself suddenly ; the insanity might continue ; the impulse may seize a person who is sane up to that moment ; never knew of a case in my practice where a person had taken life in such a condition ; in melancholia persons are indifferent to life ; if a person is really insane and the victim of melancholia I don't think the mind flies about ; it is more likely to dwell on subjects of the same nature ; a person under the influence of the first insane impulse would not, I hardly think, purchase a pistol for the purpose of taking life, and carry out that impulse thirty-six hours after ; I don't know whether the affections may be so perverted as to constitute insanity without any delusion ; moral insanity is, I think, an actual form of insanity ; medical writers differ about this ; I think it is a species of legal insanity.

Re-direct—Examined by Mr. Brady—A perfectly sane person, who steals anything he lays his hands on, has kleptomania ; with an opinion on any subject, a person might have melancholia.

Re-cross—A deaf and dumb person may have delusion ; dipsamania is a form of insanity ; think kleptomania and melancholia not synonymous ; Dr. Ray speaks of dipsamania ; also Dr. Woods, I think.

To the Court—Not every person who is low spirited from loss of property, or otherwise, is suffering from melancholia ; he has a tendency to it ; melancholia sometimes leads parties to do mischief to others besides themselves ; all melancholy has a tendency to melancholia.

*Wm. A. Hammond*, sworn, examined by Mr. Brady—Have been a physician since 1849 ; graduated at the University of New York ; entered the army in 1849, remained till 1860, when I resigned to accept the professorship of Physiology and Anatomy at the Maryland University ; was Surgeon-General of the United States army ; have been professor

of Diseases of the Mind at Bellevue Hospital, N. Y. ; have given attention to diseases of the mind and nervous system for ten or twelve years, and entirely so for four years past; have examined 10,000 to 15,000 cases in Europe and the United States; I mean I have inspected that number, giving more or less attention to the cases; heard your (Mr. Brady's) question to Dr. Rice; remember it perfectly; think from the facts stated defendant was of unsound mind; I characterize it as melancholia; I think the most decided of all the factors in his case was his (prisoner's) change of character; regard that of itself as a very suspicious circumstance in a man's career; also the fact of the symptoms coming on after his injury, which I think involved both the brain and spinal chord (witness explained the connection between the spinal chord, brain, and nervous system); his other complaints would tend to aggravate the mental disorder; the condition of melancholy is that form of temperament which predisposes to melancholia; it is difficult to define the boundary line; (witness described various phases of melancholia). In my view of Gen. Cole's condition, the announcement of an injury to his honor, love, or happiness, would certainly tend to aggravate his condition.

Q. In the condition in which he was as here stated, and in the light of this homicide, what is your opinion as to Gen. Cole's mental condition when this act was done?

A. I can only say by the sudden reception of intelligence calculated to create great emotion, his condition would be aggravated. I should not think Gen. Cole in a sane state of mind, if all the facts as stated are true; ninety-nine out of a hundred would have their mental condition aggravated; a man of strong sensibilities would be more affected; there might be a person who would care nothing about such things; delusion is the most important test of insanity, but not an infallible one; never saw an instance in which the insane impulse went so far as the taking of life.

Q. Can insanity arise from wounded pride, revenge, or insult?

Objection sustained.

(Witness here described causes and symptoms of moral insanity.)

Insanity is very often hereditary; it is stronger generally, in the first generation than in a subsequent one; witness

described nature and symptoms of melancholia ; I would not call the homicide an insane impulse, but temporary insanity ; if Gen. Cole had only the insane impulse he would have been as likely to kill the bar-tender as Mr. Hiscock ; melancholia does lead to acts of violence or murder ; Dr. Ray, Tuke & Bucknel, Escheral, Pinel, Gresinger, and numerous other books, are my authorities ; dipsamania is an insane desire for strong drink, in both sexes ; it is mentioned, I think, in nearly all the books mentioned.

Cross-examined by Mr. Tremain—Beck's, Dean's, Chitty's, and Grey's medical jurisprudence are standard medical works ; I was removed in the summer of 1864, by order of Secretary Stanton ; he preferred charges to the President, and appointed the Court on my own application ; I was in Europe 18 months studying the hospital systems ; I was a witness in the Jerry O'Brien case ; I was applied to to come here night before last ; Dr. Bradley came to see me and read me certain questions he wished me to answer ; I don't know the prisoner. (The witness was here examined at great length on the causes and symptoms of insanity, melancholia, moral insanity, and insane impulse.)

Re-direct by Mr. Brady—In the opinion I gave to-day, I was aided by my reading and hearing this case ; the symptoms showed that the disease of the spinal chord was not of a very severe character.

*Frank H. Hamilton* examined by Mr. Brady—I am a physician ; resided in New York since 1861 ; was in the army for three years as regimental surgeon and medical inspector of a corps ; before that I resided at Buffalo ; graduated in Pennsylvania ; in 1840 I was professor in the Medical College at Fairfield, Herkimer county, at Geneva College, and at Bellevue Hospital ; I have somewhat given my attention to the subject of insanity ; I heard the question put on Saturday.

Q. Assuming the facts therein stated to be true, what in your opinion was the prisoner's condition ?

A. I should say that he was of unsound mind ; one reason is that of the change in his disposition after having been so social among his friends ; I call the unsoundness of mind melancholia ; the peculiar character of the change of character is likely to lead to frenzy ; melancholia is generally a state of disquiet ; his physical condition would tend to melan-

cholia, *i. e.*, from the injury he is said to have received ; the injury gave a shock to the spinal chord, and to his nervous system ; from this results a paralysis of the bladder and intestinal tube ; a disturbance of the stomach and liver produces hypochondria ; the protrusion of the gut was due to paralysis of the nervous system ; I have never known it to occur in middle life without extraordinary provocation ; the numbness in the lower extremities is due to an affection of the spinal chord ; melancholia is manifested by reticence ; the subject is depressed, ordinarily depressed ; looks at things under a cloud ; is more intense in jealousy or revenge, and in grief at his misfortunes ; it at first disposes the individual to acts of violence against himself ; but it also creates a disposition to acts of violence against others ; a great domestic calamity would aggravate its symptoms, and would be likely to manifest itself by outward violence ; as in this case, if the person should suddenly come upon a person alleged to be the seducer of his wife, he would be very likely to take his life ; it would be strange if he did not ; if he took his life it would be an insane act ; there are no limits as to the suddenness upon which insanity may come upon a person ; it may come as sudden as a stroke of apoplexy or epilepsy ; sometimes it disappears as suddenly ; there is no exact line between melancholy and melancholia ; there is no exact line between health and disease ; melancholia does not necessarily prevent a person's attending to his ordinary business up to the moment that frenzy ensues.

I first saw the prisoner on Saturday evening, in the jail ; I examined him then ; I find he has a fracture of the breast bone, about three inches above the lower end ; the fragment still remains a little depressed, and also the corresponding ribs on the opposite side ; his belly is unnaturally swollen one-third more than it ought to be ; I attribute that to paralysis of the intestines.

I judge, too, that the muscles of the belly are somewhat paralyzed, the left lower portion of the belly is flat, indicating that there is a consolidation of tissue being pressed together more than it should be ; I observed the remnant of old piles ; the rectum was crammed full of hardened feces ; he could not expel them ; he succeeded in urinating with great effort ; the result showed that it was not done in a natural way : that

indicates almost complete paralysis of the bladder ; I did not see any distortion of the spine ; a touch of the dorsal vertebræ seemed to be painful to him ; he shrank from a touch of the breast fracture ; the sweat upon his face proved the infliction of pain ; his pulse rose from ninety to one hundred and ten ; the average pulse of a person at his time of life is seventy-five to eighty ; I examined him again yesterday noon ; I repeated my tests ; had the same results ; found he had more difficulty in urinating ; I found blood upon his pillow ; he said he had bled at the nose frequently ; that indicated a compression of the brain ; he exhibited great nervousness during the examination ; he might be said to have a bilious or sanguine temperament.

Cross-examined by Mr. Sedgwick—I have not been connected with any insane institution ; I have not made the subject of insanity an especial study ; in giving my opinion of his mental condition, I based it upon the truth of the facts stated ; some of the assumptions may not be true, and the result may be the same—almost any change but one in his character and disposition ; if that were changed, my opinion would not be changed entirely ; as a single element, it is the most essential upon which I base my opinion.

Unsoundness of mind is that in which the will has been wholly or partially lost ; insanity is a disease that affects the brain ; but not all diseases of the brain produce insanity ; if the brain was originally sound, and it becomes affected with disease, it is insanity to a greater or less extent ; the extent is ascertained by the conduct of the individual. Melancholy is a condition of partial unsoundness of mind. I would not say so in all cases. A man of melancholy may be sane. I cannot tell from my examination when the injury to his breast bone occurred.

The ganglion is the centre of a system of nerves very intimately connected with the brain : an injury to the ganglionic system is more likely to affect the brain than an injury to the spine. Its nerves extend to the spine and the brain ; every writer on insanity speaks of the ganglionic system ; I presume it will be found in Ray and Beck, probably in Rush and Taylor.

Mr. Sedgwick put a suppositious case of the prisoner's condition to the witness.

I should say that he was nearly cured, not that he had been insane or that it might not recur again; too much drink or a certain kind of dinner might bring on insanity again; the ordinary professional way to ascertain a man's insanity is to have a personal examination, as well as to get a history of the case: I don't know whether or no melancholia attacks a person suddenly; I have no doubt it does occur; I cannot say that I ever read of such a case; I suppose a sudden injury may produce it; I do not think that an injury to the breast-bone and the abdomen would necessarily produce melancholia; I did not mean to say that a person afflicted with melancholia, having had a severe domestic misfortune, would no doubt take the life of the person who had injured him; he would be likely to; I do not recall any such case; such an act would, as I have said, be an insane act; the act does not determine its character in that respect; I determine its character from the previous history of the person; I have no doubt he had intellect enough to know that the act would produce death; I think that he believed the act was right; most insane persons know the physical effects of their acts; if the person knew it was wrong to kill, then it was not an insane act, and the person was sane; but I mean to say that a man may know his act to be against the law, civil and religious, and yet he be insane; I think there may be insanity without delusion in its technical sense; delusion in that sense means an error in judgment, without any foundation in fact; I think there can be melancholia without mental frenzy or loss of mental faculties or delusion; I think *this* is a case of mental frenzy based upon melancholia.

I do not think the prisoner was insane when I saw him in jail last Saturday; the general rule in case of melancholia is that persons do not recover suddenly; I think it would be difficult to cure a person of melancholia so long as the physical causes existed; by removing all mental excitements he may improve, though the cause remain; absent-mindedness is no evidence of insanity nor is reticence, nor low-spiritness; if all these exist in a minimum degree it is no evidence of insanity, if in the maximum degree it may be evidence; a person afflicted with melancholia may not exhibit it for a while; I do not think that a case like *this* will ordinarily result in

dementia; it would tend toward it; in many cases it would end in it.

Direct-resumed—Assuming that he was insane when committed to jail, I should say that his confinement would improve his condition; an insane man often does sane acts; the confirmed lunatic does not always talk and act insanely; he may do so for a whole day; it is the rule rather than the exception that a lunatic at times talks with apparent reason; it cannot always be certainly determined when they are restored to reason; in the evidence I have given I mean to say that I do not consider the prisoner to have been responsible.

Cross-examined—Cases of kleptomania are called “moral insanity;” in those I do not consider the prisoner to have become irresponsible during the time; his irresponsibility vacillated in proportion to the character and degree of his disease.

*J. Marcus Rice* recalled by the prisoner—I produce two medical books, Ray and Wood, alluded to by me on Saturday.

*Daniel Messenger* examined by Mr. Brady—I reside in New York; have lived there twenty-nine years; was in the army: was a captain and quartermaster; was on a staff; was a provost marshal; was such till July, 1864; was then sent to the front; was there taken sick with a fever; was given a leave of absence; resigned in October; it was not accepted, but was given leave of absence. I first knew the prisoner in 1862; was never intimate with him; his character was excellent; I don't know that I noticed any change, but in 1864 he was a sad man; before that he had been genial.

Cross-examined by Mr. Tremain—I am anxious to say everything I can to exonerate the prisoner; I never saw anything irrational about him.

*Lewis Post* examined by Mr. Parker—I reside at Lodi; I have known the prisoner from his childhood; have known his family for about thirty years; have seen two cases of insanity in his family; one a sister and the other an aunt: sister was Martha; don't know how long she was insane; the aunt was sister of his father; the sister was insane sixteen or eighteen years ago; the aunt died insane about 1843; at first she exhibited loss of spirits, growing out of loss of child, then melancholia ensued, and terminated in dementia; in the case of the sister,

I judged it to be melancholia; the prisoner's mother was a very nervous person, naturally despondent; I don't know how long these symptoms lasted; I understand she is dead; I know Mrs. Meagher, a sister of the prisoner; she is disposed to be very melancholy at times; she has a tendency to melancholia.

Cross-examined by Mr. Tremain—I visited his sister Martha professionally; I saw her once; she afterwards got married and went to California; I judged she was insane from what I saw; I visited her but once: her eyes were red, and she rolled them; she seemed to mutter to herself; there was a vacant stare in her countenance; she declined to answer my questions; she had been at school, and had had difficulty there; she was about seventeen or eighteen years old; the prisoner's sister was insane for some months; she had never been insane before that; she was about fifty years old; I understand the prisoner's mother is dead; she was over sixty years old at the time I speak of; had had many children; she was only nervous; I saw the sister four to six times; saw her three to four weeks ago; she had recovered from her illness.

*Durfield C. Chace* examined by Mr. Mitchell—Am telegraph operator at Syracuse; I have dispatch and answer sent on Sunday before the homicide; it was sent to Mr. Bartow; was brought by John L. Cuyler; the last one was sent on Monday about noon; the first one on Sunday was delivered about noon.

*Frederick Douglass* examined by Mr. Parker—Am a physician; reside at Rochester; was in the army for four years; first knew prisoner at Washington in September, 1861; he was then captain; he was a complete personation of good nature, wit and humor; I first noticed a difference in the last of 1862 or the first of 1863, and after he had received an injury; I saw him frequently in hospital; he had contusion of the abdominal muscles; after he left the hospital I often saw him in his tent; he was not capable at all times of going upon marches; he went on them contrary to my directions; he suffered from constipation; I noticed a decided marked change slightly in 1862 and '63, and decidedly in 1864, when before Richmond; he was melancholy; seemed dejected and cast down; was very reticent; his eyes were dejected, red and yellow; his complexion was dark; his skin sallow; I did not then know his state of health; I next saw him in 1866 at Rochester at a reunion of



the officers; he then was pleasant at times, and sad at others; I thought he was odd and singular in his actions.

Cross-examined by Mr. Tremain—I heard of his being wounded the first time, but don't know when or where.

*Frederick Douglas* re-called and examined by Mr. Tremain—Saw the prisoner in the hospital at Newberne in the Fall of '62 before the raid; I had charge of the hospital in the absence of Dr. Palmer; did not examine the prisoner's person; he often stated his case to me; he generally went on all the raids on horseback; I prescribed for him; he always appeared rational; I judged he was a man of melancholy disposition from his being cast down and the state of his health; I saw him at Fortress Monroe afterwards; I was going to enter into conversation with him, but his manner repelled me; next saw him at the re-union of officers at Rochester in October, 1866; toasts were drank; think he drank wine; the banquet continued till 11 P. M.; he remained until it broke up; there were thirty or forty present; had a general conversation with him walking about the street at that time; talked about Texas, Petersburg, &c.; he said nothing irrational, but he changed from one subject to another abruptly.

*Edward D. Leonard*, sworn and examined by Mr. Parker—Am a physician; was in the service with Gen. Cole; remember his being brought to the hospital; he was injured at Newberne, N. C.; I tried to introduce the catheter but failed; he complained of the difficulty of breathing; was restless and irritable.

Cross-examined by Mr. Sedgwick—I was then hospital steward; had graduated in 1861; I compounded medicine under the direction of the surgeon; it was the first time I had attempted to use the catheter; the prisoner took it from me and introduced it himself.

*James Ellis, Jr.*, sworn and examined by Mr. Mitchell—Reside in Oswego; entered the army in 1862, was first a private and afterwards a captain; his health was poor in October or November, '64; knew little about his health before; he paid little attention to details, but would be excited when there was talk about moving the regiment; I went to Texas with him about the middle of June, '65; seemed more cheerful but said he was afraid of sea sickness, as vomiting brought on distress in his abdomen; he laid down a good deal; at Texas when

he came to my quarters he almost always laid on his back with his head lower than his feet; I remained until the regiment was mustered out; he did not return with his regiment, but came up the Mississippi to avoid sea-sickness; he was very fitful in his spirits, altogether different from when I first knew him.

Cross-examined by Mr. Tremain—First knew the prisoner in December, 1863, when on Gen. Butler's staff; next saw him on the 3d of January, 1864; saw him almost daily; conversed with him; saw nothing irrational; from February to May we were at Norfolk; prisoner had command of the regiment; he rode out to camp nearly every day and received the reports; went from Norfolk to City Point; he was organizing the cavalry brigade; his conversation was rational; his wife joined him in February or March; she went to Texas with him and returned, I think, in September, 1865.

*Frank M. Spaulding*, sworn and examined by Mr. Parker—Live in Tewksburgh, Mass.; first saw prisoner December 25th, 1863, at Fort Monroe; he was aid on Gen. Butler's staff, and was assigned to duty as regimental commissary in regiment; was with it about three months; was brigade commissary when the regiment was brigaded; was with the prisoner about four months; was with him at Bermuda Hundred a few weeks; was with him in front of Petersburg about two months; the regiment lay in the entrenchments most of the time, and I occupied the same tent with him; he was then suffering from his injuries; he was lying most of the time in his tent, when not on duty, on his back with hands behind his head; at night he often disturbed me by his groans, and his getting up to go out; was irregular in his sleep; he often spoke very tenderly to me of his wife and children; in September, 1864, we were ordered to the north side of James river; was with him at the engagement at Deep Bottom; we marched and fought from 2 o'clock till dark; I rested on the ground beside Gen. Cole; he suffered pain and could not sleep; he continued on duty next day, fighting; his health was bad in November and December, 1864; suffered more than usual; was lying on his back carving trivial trinkets out of clay and wood (knife produced); I recognize the knife as one he carried in his vest pocket; at this time I thought him childish when suffering extreme pain; he thought Gen. Butler was down on him; I told him several

times there was no occasion for it; Gen Butler told me there was nothing of the kind; prisoner was fretful and absent-minded; borrowed trouble and had strange schemes in regard to torpedoes in James river; he went into danger where wholly uncalled for; once insisted on going with me to a barn where the enemy were gathered, and we were obliged to return, as they fired on us with grape.

To the Court—When I told him of General Butler's reply, he still continued to complain of him.

Cross-examined by Mr. Tremain—All I know about the constipation is what he told me; when comfortably well he was more even in his manner; he was off duty twice, but with that exception, he reported for duty; he lay on a cot; I think Dr. Manly prescribed for him in November or December; don't know of any other occasions; read very little when I was with him, while he made these trinkets books and lockets; sent his orderly to get the clay to make them of, in the neighborhood of Dutch Gap; saw him make them no where else; he got torpedoes out of the river, and wanted to put them above the rebel boats and blow them up; when he wanted me to go to the barn, there were about twenty-five rebels gathering corn, and rebel earthworks about fifty rods off.

*Wm. Tift*, sworn—Live in Syracuse; boarded at the Jervis House last June; remember General Cole coming to the table on Monday before the homicide; I went in before him; he came in in a hurry, slammed the door, pulled his chair to the table, very quick, seated himself, and seemed to have his eyes set and looked very wild; his daughters were both with him; one of his daughters smiled and he smiled, put his hand to his hair and brushed it back; he appeared to be in a study; he reached out and grabbed a pickle; in four or five minutes he left; he tasted the pickle; saw him eat nothing else; he left his daughters behind; didn't see him speak; I had not then heard of any trouble in his family; his face was flushed. his eyes looked wild and red; did not see him at his meals on Sunday; he could not have been in the dining-room ten minutes.

Cross-examined by Mr. Tremain—Did not know Gen. Cole personally; saw him frequently; never saw anything peculiar about his conduct; at this time saw nothing unusual about his dress; his hair was all ruffled up; he may have been there to

breakfast, and I not seen him; I am a bookkeeper with M. S. Price.

*John M. Wilson*, examined by Mr. Parker—Reside in Rochester. Witness testified as to prisoner's injuries in the army and the effect on his spirits as detailed by previous witnesses.

Cross-examined by Mr. Sedgwick, as to witness' opportunity of knowing prisoner's condition. Nothing important elicited.

Re-direct—Knew him intimately at Poolesville; boarded at the same table two months or so; he was in good spirits after he got well.

*James W. Sherby*, sworn, and examined by Mr. Brady—Reside in Brooklyn, nominally; belong in the naval service; am a physician and surgeon; graduated at Long Island Medical College; have given attention to the subject of insanity, without making it a specialty; have read various authors and visited various asylums; have attended the trial since Thursday; heard the testimony of Drs. Hammond and Hamilton. (Assuming the facts stated in Mr. Brady's long question, question here repeated).

Witness said they point very unmistakably to unsoundness of mind; the main indications point to melancholia as the leading form; if delirium at times and the injuries at present existing, as described by Dr. Hamilton be superadded, they show that few men could have survived such injuries; all seem to corroborate that the unsoundness of mind had great cause in the injuries received; the change in his spirits and habits points to unsoundness; congestion of the brain is often associated with outbreaks of insanity, terminating in homicide. Witness here described melancholia. The condition of prisoner's mother (as previously described) was monomania; that of his aunt was melancholia before it became dementia. The four cases cited show a strong tendency to insanity in the family. The effect of a sudden announcement affecting his pride, honor, and affections on any one so affected would have all the symptoms deeply exaggerated; if he suddenly came on the man occasioning the injury he would be very apt to take revenge; I think General Cole was evidently insane on the 4th of June when he committed the homicide; a person affected with moral insanity may do a thing he knows to be wrong, but has no control over himself, and hence is morally insane; a lunatic

is capable of doing sane things; manifesting great cunning, and reasoning legally, granting his premises.

I have been in the naval service for seven years, as surgeon. I graduated in 1861; I remained at the lunatic asylums that I visited, from one to three hours; was never attached to any; never made the subject of insanity a special study; my opinion was solicited last fall, by Senator Cole, brother of the prisoner; I can say I have been the operator in as many as five cases of surgery; I cannot state how many; I will swear to ten cases; cannot say I have had as many as fifteen cases; they were ante-mortem cases.

In the supposed case put, I attribute the alienation of mind to the effects of the injuries. I assume that the spinal cord was injured; there was injury to the great sympathetic system, to the bladder, intestines, and stomach, and there might be others. The breaking of the sternum, if isolated and not affecting the nervous system, would not affect the brain. A shock to the nervous system would probably speedily affect the brain. Since I was first spoken to about this case, I have read the books upon the subject.

Delusion is the general test of insanity. I agree with Dr. Hammond that the supposed case was not one of insane impulse.

In this case, so far as the intestines are considered, the constipation and sudden protrusion of the lower bowel point to the result spoken of; my observation in the army was that constipation was very common among the soldiers, and that either constipation or diarrhoea were almost universal; if the protrusion of the bowels took place at the time of the injury I should impute it to the injury; if he was subject to piles, that may have been the cause of the protrusion, unless it was a very great protrusion; in piles there may be a protrusion of one or two inches; in piles it is common for the patient to discharge blood; long continued bleeding piles may produce depression, and thus lead to insanity; I never saw or read of a case of the kind; I think it is possible.

I assume that the bladder was affected because of the difficulty of evacuation; the bladder might have been partially or wholly paralyzed; if there was no suffering from it, it might not affect the brain.

I think the spinal cord received some injury either by com-

pression or shock; it is difficult to answer to what extent the spinal cord was affected; I have not had cases where the spinal cord was affected; I have heard of cases where the person survived the entire compression of the whole or a part of the spinal cord, and where the mind was not affected. The spinal cord begins at the base of the brain, passes down through the vertebra to the bone above the hips called the sacrum; it is as large as the finger.

It is not essential to determine insanity, to learn whether the person knew the act to be wrong. My theory is, that the will of the person is overborne, though he knew the act to be wrong. If the person should at once say after the act that he knew it was wrong, and *that* he expected to be hung for it, it would still be an insane act.

Melancholia is more apt to be slow and progressive in its development. I have read of cases where it has very suddenly arisen; not spoken of as a common thing; as a general thing it is of slow development; I cannot say that there is any case of melancholia only arising as suddenly as in one night; it is so recorded in Ray. It speaks of a particular case of the kind; I did not come here with my mind made up; made up my opinion after I got here.

The laws that govern mental diseases are not wholly capricious; mental alienation may exist without a disease of the brain. The general tendency of melancholia when not relieved, is to pass into dementia. I would address my remedy to the cause. If the cause continued, I would expect to find the disease continued. The general rule in melancholies is a tendency to self-injury. I do not call to mind any case where the person sought to inflict injury upon others.

I do recognize this as a case of dementia; I do not in this case assume a congested condition of the brain; a cause of such congestion would be a disturbed circulation; congestion soon displays itself; insanity may exist without delusion or dementia, or the frenzy resulting from it; in this case there are circumstances that point to delusion, but not clearly; in forming my opinion in this case, the most important feature is the change in his character; another essential feature is the tendency to congestion of the brain; another is his nervous irritability of mind; another the constipation; another, his general suffering and wearing out, gloom, &c., his not recog-

nizing his friends; his loss of sleep; his variableness of appetite; his sitting in gloomy moods. If it could be proved that his character and disposition had not changed the most essential element would be gone. Headache is no evidence of congestion of the brain. His flushed face and red face shows tendency to congestion. An angry man may have his face flushed; a man speaking of going to Montana or California in pursuit of business does not show a vacillation of conduct; it is not unusual for men, in the cares of life, to be absent-minded.

I never treated a case of insanity.

*Direct resumed, by Mr. Brady*—It cannot be determined without knowing the man whether in case of anger his face would become red or white; I think redness is predominant; in considering a case of insanity we take all the features of it, and no one in particular; the temperament is one element.

*Alfred Boker, examined by Mr. Parker*—I reside at Ovid; have been a physician for twenty-five years; was for a short time a professor in Geneva College; I have met the ordinary number of cases of insanity; have met with cases of melancholia, perhaps ten or twelve.

It is difficult to draw the line between melancholy and melancholia, the latter may be a delusion; melancholy is a depression of spirits, so is melancholia, but generally accompanied with delusion; melancholy is a mental disease. I have known two cases where insanity has come on suddenly; the one was that of a married lady who went to bed sane, and was insane in the night; I had not seen her before.

The other case was that of a woman whom I found to be insane. I only know from information how suddenly it came on; I did not regard either as cases of melancholia, they were of decided insanity. In these two cases the disease suddenly left them in the course of two or three days; the persons seemed to be unconscious of what was going on—seemed to be in an ideal world.

I heard the suppositions as put by Mr. Brady. I think such symptoms indicate an unsound mind. I should call it melancholia. If such a person should suffer an injury and should meet the author of the injury, he might slay him; I should regard that as an insane act. In melancholia it is difficult to

describe the expression of the countenance, but it is easily recognized.

Injuries induce melancholia, because of the sympathy in the nervous system.

I knew the prisoner while a student at Ovid. He was then of a cheerful disposition; nothing of a desponding character.

*Cross-examination*, by Mr. Tremain—I was Professor at Geneva College for two years—Professor of Practice of Medicine; I never knew a case of homicide resulting from melancholia.

In the two cases I speak of I did not know of my own knowledge of the cause of insanity. In both cases there was a disease of the stomach. When the disease disappeared the insanity did also.

In the supposed case I do not at all regard the case as being affected by the knowledge of the person that the act was wrong. His declaration to that effect would not change the character of the act. It would still be an insane act.

The usual tendency of melancholia is to dementia; I never knew of a case of recovery without the removal of the cause; sane men may be absent-minded and low-spirited; it would be strange, but the case may be where there would be a destruction of the spinal chord at one point and a paralysis below it, and yet the mind be undisturbed and the spirits remain cheerful; I cannot say that a person may have an insane impulse without previous derangement of mind; the insane impulse comes suddenly, but remains till the object is accomplished.

In melancholia the sadness of the countenance becomes permanent and fixed, and so that familiar persons can recognize it.

*Direct resumed by Mr. Parker*—The effect of confinement of a person afflicted with melancholia would be that of improvement and removal of disease.

The results of injury to the spinal cord depends upon the part injured. If the part was connected with the great sympathetic nerve it might affect the brain. I should think from Dr. Hamilton's evidence, that in this case the sympathetic nerve had been disturbed; that nerve extends the whole length of the spinal cord.

*Cross-examination resumed*, by Mr. Tremain—I have seen



affections of the spinal cord where the person lived after it; after confinement in jail, if the cause continued I should expect to see the insanity continue.

*John L. Cuyler* examined by Mr Mitchell—I reside in Syracuse; have lived there seven years; before that at Aurora; I am a bookkeeper; I am 25 years old; I married Mary E. Cole; she resided in prisoner's family for a long while; she is cousin to the prisoner; I married in June, 1866; I first knew the prisoner in 1862; I first visited his house in 1862; I continued in his family from that time; his family boarded in different places, three places, till December, 1865, when they kept house. I remember the time of the homicide, on Tuesday, 4th June; I saw him on the Sunday before the 2d; he went to New York the Tuesday before. In May, 1867, the family went to the Jervis House; his children had rooms in story above his. On the Sunday I was sent for, at about 8 o'clock; I was in bed; got up and went to prisoner's room; his parlor. I suppose his wife was in the bed-room where he was; his eldest daughter soon came in, out of the bed-room; I went away; returned after breakfast; saw prisoner come out of the bed-room; he came out in a very excited manner; appeared to have been weeping; his eyes were bloodshot; had wild appearance; hair seemed uncombed; think he had no coat; he shook hands with me and at once asked if I had ever seen Mr. Hiscock at his house; I said I had; he asked if I had seen him there frequently.

Mr. Tremain objected to the introduction of the evidence if it purposed, as avowed, to show communications to the prisoner by third persons.

Mr. T. referred to the Sickles case to show that even in that such testimony was excluded, including even the confessions of the wife's adultery.

He claimed that a homicide committed a day after a communication of alleged adultery, is by law, murder.

Judge Ingraham here stated that he had no doubt upon the point, so far as it related to the question of justification or provocation, and that he only desired to hear Mr. Tremain upon the point so far as related to the question of insanity.

Mr. Tremain referred to several English and American cases. He claimed that the question was one of law, and, therefore, for the court, and not for the jury. He claimed

upon the basis of these, another, this : That cases like the one in question were murder, and without justifiable provocation, and without palliation.

Among the cases was one of the Court of Appeals of New York, decided last September; case of *People v. Lewis*. The prisoner Lewis was indicted for the murder of Richmond, near Poughkeepsie. Lewis on returning home found his sister weeping. She said that Richmond had called her and her mother prostitutes. Lewis went to Richmond at once, and within five minutes beat him to death with his fists. The prisoner then at once declared that he had got satisfaction, and was willing to give himself up. On the trial the prisoner sought to prove the declarations of his sister to him, and his own declarations after the homicide. The court held that the latter was not admissible. It decided the declarations of the sister to have been admissible, but coupled it with the opinion that it would not have been if the prisoner had used a deadly weapon to accomplish the homicide. If the prisoner clearly intended death then the communication was not admissible to reduce the crime from murder to manslaughter, and which intent would have been presumed if he had used a deadly weapon.

He claimed that the testimony thus far does not show any such case of insanity as excuses a man from the responsibility of his act of crime.

Mr. Brady, in reply, said that since the case of McCann, the law is that while the law presumes every man to be sane till the contrary is shown, yet when the defense has raised a doubt upon the question of sanity, the burden of proof is thrown upon the prosecution.

Mr. B. closed after a few remarks, leaving the discussion of the question to his associate—

Mr. Parker, who replied that in some of the cases cited by the prosecution, the defense was not that of insanity, but of a suddenly acquired frenzy, growing out of sudden intelligence.

He claimed that in this case the defense had proven a case of insanity, supported by the evidence of professional men and experts.

He referred to the case of Mary Harris at Washington, for the murder of Burrows, wherein the evidence of the violated

marriage engagement of the deceased was allowed after there had been but slight evidence of her insanity.

In this case he claimed to have made out a very strong case of insanity. This proof now offered is to show the propelling power that gave direction to his acts, and that showed the motives which impelled him to those acts.

Similar proof was allowed in the Smith and Carter case at Philadelphia.

In the late case in the Court of Appeals referred to, the question of insanity was not involved. That opinion was addressed to a case where sane conduct governed the party.

The prosecution desires to keep out of this case the great fact that led to the homicide, the proof of the great wrong under which the prisoner had suffered.

Mr. Tremain replied. He boldly avowed that the deceased, L. Harris Hiscock, had never wronged the prisoner by word or deed. He therefore opposed the introduction of this evidence, solely because of its legal inadmissibility.

He claimed that the physicians in this case acted upon the notion that the normal condition of mankind was insanity, and that the existence of sane men was an exception to the rule.

While acquittals had been had in other States in cases of bloody murder, and under the rulings of court, he was glad that the soil of this State had not yet been stained by such scenes.

Judge Ingraham said that there was evidence by physicians, that such communications made to the prisoner might affect his reason. With that evidence before me, I do not feel at liberty to exclude the evidence. But I admit it only as evidence, showing its effect upon his mind, and not in any wise as proving the truth of the facts stated. In other words, only as showing the effects of it upon the mind of the prisoner.

*John D. Cuyler* re-called and examined by Mr. Mitchell.

I told the prisoner I had seen Mr. Hiscock at his house frequently; he said, "I thought when I left Syracuse to go into the army, that I had left some friends at home;" he said he had seen his wife and that she had confessed all; he then exclaimed, "Oh, my poor children!" and commenced to sob; would put his hand to his head and appear greatly excited; he asked me why I had not told him; he said he believed his

poor wife was more sinned against than sinning, and did not, himself, know what to do; he said he did not care to live, and as he talked of his children, the tears rolled down his cheeks; complained of pain in his head; he sat in the rocking-chair with his hand to his head; would look up and ask me a question and then settle down again; was more agitated than I had ever seen him; he asked me if my wife knew anything about the intimacy; I told him I thought she did; he asked me to tell her to come to him; he said he would do anything for his children; I tried to quiet him; did not succeed; he then asked me if I would take a telegraph to the office; he was weeping most of the time; his eyes were bloodshot; I supposed his wife to be in the bed-room; I took the telegraph; it was for Henry D. Barto, Trumansburgh; between 9 and 10 A. M., (dispatch identified); I went back to his room; I think after dinner; found him in very nearly the same condition as before; as he referred to the occurrence, his exclamations were, "Oh, my poor children!" I staid there half an hour to an hour; Mrs. Cole did not come out of the bed-room; his coat was off; at each time when he sat down in the chair he would put his hand to his head; his eyes were bloodshot and countenance flushed; I did not succeed in quieting him; the oldest child came in; only staid a few moments; said he couldn't eat anything; he did not eat; came in again after supper; was in about the same condition; his wife still remained in the bed-room; next saw him on Monday morning after breakfast; he was then somewhat quieter; think his countenance looked worse than the day before; he said he could not sleep—that he couldn't stand this much longer; if it wasn't for his children he did not care to live a moment; in talking of his children he became very much excited; his whole body trembled; he showed me a paper on Sunday morning and asked me to read it; I did so, and handed it back to him; it was in his wife's handwriting; was with him about half an hour on Monday morning; handed me an envelope; letter produced was in it; it was in Mrs. Cole's handwriting; this was on Monday noon; (envelope identified;) I placed it in my safe at the office Monday afternoon; I took it out of there on the 7th of June and gave it to Mr. Hadley, sealed; was present when it was opened, I think on Wednesday evening last, at Mr. Hadley's house; it was in the same condition; it had not been opened;

Messrs. Hadley, Parker, and Mitchell were present at Mr. Hadley's when it was opened; next saw prisoner Monday at his room; his wife was in the bed-room; I had not seen her; he continued very excited, wringing his hands; he told me he was going to take his wife to Brooklyn; he said he had talked with her, and each time she had told him more about her intimacy with Mr. Hiscock; he said she burst into tears, when he first spoke to her about it, and said if he would have patience she would tell him all; the food on the piano was seemingly untouched; he spoke of starting to Brooklyn on Monday; on Monday noon he handed me a telegraph he said he had received from Trumansburgh (dispatch identified); next saw him on Tuesday morning at his room; his wife was in the bed-room when I first went in; he appeared less excited, though his countenance appeared excited; his hands moved continually, nervously; his eyes were very red; I only staid a few moments; I sent up a baggage-man; he said he was going to take his wife to Brooklyn, but then he intended to stop at Albany and have an interview with Mr. Barto, a brother of Mrs. Cole; I returned to the house again.

Defence here offer to show why he went to Albany with prisoner. Objection sustained. Exception taken.

I made up my mind to go about 10½ A. M.; I had no business; I met Mrs. Cole and the General at the depot; secured a seat for them, bought the tickets and checked the baggage; they sat near the front of the car in a double seat, and I in a short seat fronting them; the last time I was at the Jervis House, I saw Mrs. Cole. (Defence offered to show her condition. Excluded. Objection withdrawn.) She looked very sad, pale and quiet; on the way down, occasionally he would speak to his wife; saw tears in his eyes; saw on the floor of the car a number of short black hairs, and saw that he had pulled them out from his mustache; he was rather restless; spoke to no one but his wife, except to me once or twice, in coming to Albany; he looked rather strangely; a good portion of the time he sat with his hand to his head; would look up wild and excitedly; he refused to eat, but at St. Johnsville said he would take something in to Mary; said he intended to see Mr. Barto and then we would go right over to the 7 o'clock boat; afterwards he said perhaps we had better go on the Harlem road; then said we had better go by boat, after all; at Sche-

nectady he couldn't find his tickets when the conductor came; felt in all his pockets and stood up, but fell down; he did not find them; the conductor came back afterwards and said a couple of tickets had been found at St. Johnsville; prisoner did not find them; we arrived at Albany about 5 o'clock; near Albany, he said we will stop at the hotel nearest the depot, and after I have seen Mr. Barto, we will go to the boat; he did not take his wife from the cars; I took her off; he said, "I can't bear to see anybody; it seems as if everybody knew my trouble;" she took my arm and we went into the Delavan, in the back door; I left him on the car; I got a room for her and one for myself; I registered the names; hers and mine under it; then went to the sitting-room and we started to go up-stairs; at the first step the General came and went up with us; they went into the first room and I in the second, on the third floor; when I came out the General was standing at his door; said he would find Mr. Barto as soon as possible and take the night boat; he asked me to register his name; I did so—Dr. and Mrs. George W. Cole; I saw Mr. Barto at the front door of the Delavan; he went up-stairs with me to the General's room, at my request; they were together perhaps half an hour; I asked him to get some supper; he went, but got up and said he could not eat; he ate nothing; I do not know of his eating from Sunday morning to this time; he seemed very weak in going up-stairs; did not speak at the table; he left me at the table; asked me to send something up to his wife; after supper I went up-stairs; found the General and Mrs. Cole in their room; I think he was lying on the bed; his eyes were bloodshot; looked as if he had just been weeping; he was excited all the while; his hands trembled; he then asked me to find out when the cars went, as it was too late for the boat; I went down and saw the time table; think the train left at 11 o'clock; went to the room and spoke to him; I think he came down with me; he said he was not satisfied with his interview with Mr. Barto, and wanted to see him again; he asked me to go and stay with Mary; said he was afraid she would commit suicide; I told him the number of Mr. Barto's room; it was about 7½ o'clock; left him standing at the door and went to his wife's room; on the cars she was veiled and very quiet; didn't see her have any conversation with him; when I went up-stairs she was sitting by

a table reading the Bible; I remained there until two officers came in and said General Cole had shot Mr. Hiscock; we were alone at the time; I went down-stairs to Mr. Barto's room and requested him—(objected to); he did not come up; I went to the station-house with Mrs. Cole between 10 and 11 o'clock; did not see him; the children were left behind with my wife. (Photograph produced and identified).

Q. Whose is it?

Objected to.

Cross-examined by Mr. Smith—Saw Mrs. Cole on Saturday evening before Cole came home; next saw her on Tuesday morning as we left Syracuse; I supposed her to be in the bedroom all the time; don't know as any one else saw her; I have been examined before the Grand Jury of this county a few days after the homicide; was asked to state all I knew about it—all that was said or done at each of the interviews referred to at Syracuse and on the trip to this city; I was re-called; think I had an interview with Mr. Hadley; stated I had given all I could remember; don't remember, but think I said Cole had complained of a headache; don't remember if I said he asked me if my wife knew anything about it, but think I did; on Sunday morning, he made no further inquiry about Hiscock and his wife; (witness was here examined at length as to his testimony before the Grand Jury); witness said I stated all I could remember; you did not ask me; I wrote the telegraph; he dictated it; it was, "all are well—urgent business requires Henry;" took it to the telegraph office; stopped at a newspaper office; then went back; don't know whether I testified before the Grand Jury, that I staid only a few moments; I think I did not see Cole that night again; may have stepped in a moment; think I saw nobody but Cole on Monday morning; before the Grand Jury, I don't remember whether I swore he couldn't sleep—don't think I was asked; I did say he trembled; don't remember the exact word; I saw nobody in the room on Sunday; met Mrs. Pelton coming out; she is half sister of Mrs. Cole; a paper was shown me on Sunday; it was a confession (paper produced and identified); I think there was no pencil mark at the top then; might have been Monday—swore before the Grand Jury it was on Monday; prisoner told me to take that and put it where it would be safe; I know it is the same paper by a little scratch on it, where

it is rolled up; I said nothing about this paper before the Grand Jury, I forgot about it; I was asked particularly about the papers, but did not think of this till I got home to the city; it was delivered to me sealed; I put it in the safe, and as far as I know no one saw it till I gave it to Mr. Hadley on the 7th of June; there were other papers, and I could not think of this; I knew there was trouble about Mr. Hadley having papers; prisoner asked me to read it; (Mrs. Cole's confession produced and identified); it is her handwriting; the pencil marks were not on it; think these were in her handwriting; first saw this at the Courier office; I got it from Mr. Walrath at the instance of Mr. Hadley and delivered it to him; did not know the paper had been left at Syracuse till after; (here paper produced and identified as the handwriting of General Cole). Paper marked A was delivered on Sunday and one in the envelope on Monday; the last is the one I forgot about before the Grand Jury; that is the one that was opened last Wednesday at Mr. Hadley's house in the evening after 8 or 9 o'clock; Mr. Hadley produced it.

Witness was here further examined in regard to his testimony before the Grand Jury.

I think Hunt the baggage-man came for the baggage; am positive there was no talk about seeing Hiscock; may have said he did, when I was before the Grand Jury; don't think I so swore; never said anything about seeing Hiscock at Albany while he was coming to this city, or at Syracuse; that he did say he intended to have an interview with Hiscock, but said nothing about Albany; General Cole furnished the money to pay for the tickets; gave me \$20 and told me to buy three tickets; he did not say where for; I checked the baggage for Albany; he did not tell me, but I knew he was going to Brooklyn, but didn't know after I got to the ticket office, which route we would take from Albany; think his mustache was two or three inches long; it was very heavy; saw 20 or 30 hairs on the floor; I looked and missed them from his lip; I was in the smoking car part of the time; not one-third of the distance; the General and myself talked about stopping at Albany in her presence.

Witness was here examined at length as to his testimony before the Grand Jury.

I went to the capitol to see Mr. Barto; did not wait till the



Convention adjourned; he came down and went to General Cole's room and I retired; think this was about 6 o'clock; after I went into Cole's room I retired, and Barto and Cole remained together about half an hour; when I went up to Mrs. Cole's room, after parting with Cole, I found her reading the Bible; she was composed and tranquil; when I took the *Journal* up-stairs, Cole said he wanted to see Barto the second time.

Re-direct—At the time when they desired me to go to Brooklyn, Mrs. Cole said she would like to have me go with them on account of Cole's condition; she said he was weak and excitable; I had no knowledge that Cole intended to do any injury to Mr. Hiscock, or about the homicide; when he got off the cars he said he might go on to New York, and that we might go to the hotel; I was before the Grand Jury twice; Mr. Smith examined me; he answered questions yes or no sometimes; I attempted explanations, but he stopped me; his assistant took down the evidence; I never saw it.

Re-cross examination—I mean to state that there was no restraint in the examination before the Grand Jury; I was asked to state all I knew, or saw, or heard, and had the opportunity to do so; I say positively that I was not restrained from answering relative to one or two points.

Mr. Mitchell said the defence would probably get through with their evidence to-morrow morning.

Mr. Hadley offered in evidence the letter produced yesterday, and testified to by the witness John L. Cuyler. Its reading was objected to by Mr. Tremain.

*William J. Hadley* was sworn and examined by Mr. Mitchell—I know the paper in question (marked Exhibit B): I received that envelope and paper within a few days after the homicide, and I think within a week; I received it from John L. Cuyler; the envelope was unsealed; it was opened one evening last week at my house and in the presence of some of the counsel; I have always kept the paper in my possession; I never saw its contents till I opened it last week.

Cross-examined by Mr. Tremain—My impression is that I was first spoken to about being counsel in the case the day after the homicide; I first saw John L. Cuyler the day after the homicide; the Grand Jury sat the following Monday; I did not receive this paper at the first interview I had with Cuy-

ler ; I think I received it before the Grand Jury met ; I think I received another paper from him then ; Mrs. Cole was in town several days after the homicide ; I had interviews with her ; one at the jail and the other at the place where she was stopping ; I think she remained till after the Grand Jury met.

Mr. Tremain objected to the introduction of the letter as evidence. He claimed that there was an utter improbability of the truth of the delivery of it to the prisoner before the commission of the homicide. The paper on its face shows that improbability, and all the circumstances attending the history of its delivery to the counsel and its retention proves the same fact.

Mr. Parker, in reply, claimed that the Grand Jury had no right to pursue the question as to the existence of the paper. The circumstances attending its delivery to Cuyler are reasonable to belief. The matter of the letter is most important to show its effect upon the prisoner's mind.

Judge Ingraham decided that as the case is now presented, the letter is not admissible as evidence, for there is no proof that the prisoner had seen its contents.

*Wm. J. Hadley* recalled by defence.

Q. Did you converse with the prisoner about this letter ?

Objected to and disallowed.

Q. What did the prisoner state to you as to the contents of this paper ?

Objected to and disallowed.

Q. Did you see Cuyler about the paper because of what the prisoner said ?

Objected to and disallowed.

*W. H. Palmer*, a witness, called, sworn and examined by Mr. Parker—I am a physician ; reside at Providence, R. I. ; was in the army—part of the time with the prisoner's regiment ; the prisoner was thrown from his horse the first time in October, 1862 ; he was taken to the hospital ; he was suffering from voiding the urine, prolapsus of lower bowels, difficulty of breathing and great nervousness. The protrusion of the bowels was not the result of piles ; it was owing to a relaxation of sphincter ; there was evidently a paralysis of the bladder ; there was a depression of the sternum ; I did not notice any breaking of the sternum—never knew it was bro-

ken ; I knew it was depressed ; I attributed the difficulty of breathing to nervous irritation ; there may have been a fracture of the breast bone ; such a fracture would produce such nervous irritation ; a fracture would account for the trouble of breathing. In the first year of service he was jovial, social and exuberant in spirits. I know nothing about a second injury ; was with him for a year and a half after first injury. After that injury there was a marked change in him ; he was retiring, gloomy, desponding and depressed ; his countenance was dejected ; I have always thought he suffered from melancholia.

He was Major at the Tarboro' raid ; it lasted five days ; there was marching day and night ; no sleep after the first two days ; the prisoner made complaint ; he spoke of having seen visions ; it increased his despondency and I gave him a sick leave of absence. I know nothing of his falling from his horse on that raid ; he was then of unsound mind, as I understand the term, melancholia.

Cross-examined by Mr. Tremain—I was surgeon of the regiment, Third New York, for three years ; he was only in the hospital for the three weeks I mentioned ; I was not with him when he was injured ; I never knew of any other fall ; I understood that he and the horse fell and he was hit by the saddle ; in my examination I endeavored to ascertain his exact condition ; my opinion then was and now is that the difficulty grew out of a shock rather than from any other cause ; my opinion then was that the depression of the sternum did not produce the results of detention of the urine, difficulty of breathing and protrusion of bowel ; I did not see or hear of any discharge of blood ; all the difficulties yielded to my care ; I do not remember that there was any constipation ; there was relaxation of bowels ; the difficulty of breathing yielded to a great extent ; he had a very extended abdomen that I believed was hereditary ; the service of soldiers tended rather to elevate their spirits than depress them ; home sickness tended to depression ; soldiers in the campaign of the Chickahominy generally acquired a sallow complexion ; many undoubtedly lost their lives from their exposure there ; it was not unnatural for the men to have visions on the Tarboro' raid ; I was afflicted in the same way. The affection disappeared upon obtaining food and rest.

Direct resumed by Mr. Parker—The prisoner was sick at his quarters in the fall of 1862 from pneumonia ; at the time I thought the shock had affected the great sympathetic nerve ; that would have an effect upon the mind ; the difficulty at his quarters was from taking cold.

Cross-resumed—I did not regard it as a case of uremea.

Mr. Hadley proposed to read in evidence the paper marked exhibit A ; it was read as follows, a part in the pencil mark at the top not being read :

“Dear Husband—In answer to your inquiries, I acknowledge that about the summer of 1864, L. H. Hiscock, having frequently called at our house on business, one evening, in the absence of other persons, first by force prevailed upon me to yield to his desires, and partly succeeded in his efforts. At various times afterwards, from shame and fear of exposure, he obliged me to in part submit to his caresses, only desisting from his persecutions at last on your return. \* \* \*

\* \* \* I have refrained from exposure from fear of consequences.

“MARY B. COLE.”

NOTE.—The body of the above letter is written in ink—the paragraph preceding it with lead pencil.

*Mary E. Cuyler*, examined by Mr. Mitchell—I am 23 years of age ; my maiden name was Mary E. Cole ; I am cousin of the prisoner ; went to live with him when I was eleven years of age, and remained till I was married ; I boarded at the Jervis House at the time of the homicide. He went to New York on the previous Tuesday ; I went to his room on Sunday forenoon ; he was alone in his parlor ; I supposed his wife to be in his bed-room ; I was there fifteen minutes ; he was walking the room very excited ; he asked me why I did not tell him of what was going on about Hiscock being there ; he said he thought he had left friends when he left home ; I tried to smooth it over by telling him not to feel so bad ; he said that Mary had confessed all and he knew all.

[The witness here was affected to tears.]

He proposed to bring his daughter, but I advised him not to ; he spoke of telegraphing and going to see Mr. Fenton ;

his eyes were red and he cried ; he kept moving his hands ; I could not stay then and I went to my room ; I next saw him at his room after dinner ; he did not go to dinner ; he was then about the same ; just as excited ; he did not blame me so much ; he asked why we did not stop his wife.

I went to the bed-room and found Mrs. Cole in bed ; that was about one o'clock P. M. ; I went again in the evening ; affairs were about the same ; Mrs. Cole was still in bed ; I spoke to her ; he was in and out of the parlor and bed-room ; he did not say much ; he would cry at times ; his eyes were very red and wild ; I only remained a few minutes ; did not see him again that evening ; the children remained in my room ; on Monday I went I think before breakfast ; affairs were about the same ; he was up ; she was in bed undressed ; he did not seem any quieter ; I think I went after breakfast ; they did not want anything to eat ; I took in coffee and rolls, he drank some, but did not eat ; he was very much excited ; I was in and out during the morning ; after dinner he said he thought of taking his wife to Brooklyn, that he could not leave her at Syracuse for fear she would see Hiscock ; he would not leave her a moment ; I packed some of her clothing, enough for two months ; I saw him again in the evening ; he was about the same ; she got up before dinner ; she was up in the evening ; I saw him on Sunday morning ; she was up too ; I thought he was more excited ; he walked about, trembled, groaned and cried ; I first proposed that my husband should go along ; prisoner asked if I thought he could go ; my husband came in and the prisoner asked him if he could go ; prisoner proposed to stop at Albany and see Henry Barto ; they left home at 10.30 A. M. ; prisoner was much excited and cried ; prisoner was at his meals on Tuesday ; don't remember whether I saw him eat anything ; on the Tuesday before prisoner spoke to me on this subject before we went to New York ; prisoner said he had seen Hiscock in the street, and he looked as guilty as a dog, and that he thought Hiscock had wronged him ; he (Hiscock) had asked him when he was going away ; I said I guessed there was no wrong about it, only a little flirtation ; I said in answer to his question that he had come pretty often when they lived in Salina street ; I thought I had smoothed it over pretty well ; that was the first conversation I ever had with him on that subject.

During the said Sunday, Monday and Tuesday he did not complain of his head ; he put his hand to his head a great deal ; I have seen this paper before at Syracuse (diagram of the Assembly Chamber) ; the same name was on it then as now ; saw it last summer in Mrs. Cole's drawer ; prisoner was a very pleasant and lively man before he went to the army ; I don't think he was as jolly when he came home ; was sadder, and not, I think, as talkative or funny ; was in poor health on his return ; complained of trouble in his chest and difficulty in breathing ; he laid down a good deal ; he said repeatedly that he did not want to live only on account of the children ; he said he thought Hiscock had a man hired to kill him, and that if he was killed I would know who did it ; he said a man had watched and followed him ; had met the man on that day, Monday ; I did not communicate to him anything I had seen between Hiscock and his wife.

Cross-examined by Mr. Smith—He did not ask me anything about it ; Mrs. Graham was there on Monday and Tuesday in my room sewing for Mrs. Cole : I do not remember of seeing the young Mr. Cole, who has been a witness, before Wednesday morning, when I left home ; I saw Mrs. Felton there ; I went to the room of prisoner on Sunday only three times ; I have been examined before on this subject, on the 13th of June last, before the Grand Jury ; my recollection was then fresh, and I gave a correct statement of the first conversation. [Her testimony then given was here read to her, and she said it was correct.] My husband and I went out to dinner to a friend's house ; gone from 4 to 7 o'clock ; stopped at prisoner's room on return ; but little was said more than I asking if I could do anything for him.

Don't remember of spending a portion of Monday in his room ; I mended his coat at his request ; he had a pistol ; did not see him load it ; he was doing nothing with it ; I conversed with him ; I think it was after dinner that he spoke of taking his wife to Brooklyn ; I think I spoke of that before the Grand Jury, and also about his not leaving his wife at home for a day ; he was dressed when I saw him on Sunday and Monday mornings—think he had his coat on ; he trembled very much on Tuesday ; he was writing, and trembled very much while writing. (Paper produced by counsel.) I

saw him writing it. Exhibit C.) I did not know what he was writing.

Hiscock was mentioned that morning ; cannot tell what it was ; after he wrote the paper he folded it up and gave it to me ; he directed me what to do with it ; he told me that if I heard of any fuss, that he was going to see Hiscock, and was going to make him get on his knees, and wished to be thus represented, and that I should have it published if I heard of any disturbance ; he spoke of putting it in an extra of the newspaper that printed it ; I kept the paper in my drawer till I heard of the homicide, and then I sent it to the Courier office for publication.

I am not unconscious in saying that I first proposed to have my husband go along ; Mrs. Cole did not first propose it : Mrs. Cole said she did not know how she could control her husband in the cars ; prisoner was not present ; that morning the prisoner said he wanted my husband to go along, from fear his wife would commit suicide ; after that I urged my husband to go ; at the conversation on the Tuesday before, when I spoke of a flirtation, the prisoner smiled ; I don't think I spoke of this before the Grand Jury ; I then swore that the first I had heard of any wrong was on the Sunday in question ; I meant by that any criminal wrong.

On his return from the army, in March, 1836, he was pleasant in his family. He complained of his difficulty about his chest and bowels ; before the Grand Jury I was under examination for two or three days ; I was asked to state all I knew ; I think I then spoke about the prisoner having spoken about his fear of a man following him, &c. ; the pistol I saw him have was a revolver ; it belonged to one of his daughters—Alice ; I came to Albany alone on the day after the homicide ; I remained here till after I was examined before the Grand Jury.

Direct resumed—Some of my cross-examination by Mr. Smith, before the Grand Jury, was pleasant, and some I thought was cross ; he would stop me and say that he did not want that then and to wait, but I guess we got at it after awhile, and I would state it. On the Tuesday morning Mrs. Cole told me how he had raved all night ; the prisoner called me out and said he feared the poor, sinful woman would take her life ; Mrs. Cole said that she feared she would never come

back ; that she feared she was going to her death ; and she told me what she wanted done with her children. [The witness again manifested much feeling and shed tears.] I then suggested that my husband should go along with them ; the sewing girl had been engaged some time before ; Mrs. Cole proposed not to have her sew, but I urged it because the children wanted clothing.

Cross-examined—I think I told all I knew before the Grand Jury.

Mr. Hadley read the dispatch sent to Mr. Henry Barto at Trumansburgh :

“Come here quickly, for Heaven’s sake,

G. W. COLE.”

The answer was that Barto was at New York or Albany, and inquired what was the matter. Cole sent another back :

“All are well, but urgent business calls for Henry.

G. W. COLE.”

*John Demill* examined by Mr. Mitchell—I live at Syracuse ; I knew Hiscock ; have seen Mrs. Cole.

Objection was made.

Mr. Mitchell stated that he proposed to prove that in the fall of 1864, Hiscock employed witness to take him (Hiscock) and Mrs. Cole upon a ride in the night, and that by this and other facts he proposed to prove the fact of adultery.

Mr. Tremain said the evidence now offered was offered for the purpose of showing adultery between the deceased and prisoner’s wife several years since. He objected to the testimony :

1st. On the ground that the testimony is inadmissible by way of excuse, or palliation, upon an indictment for murder, or to reduce the offence from murder to manslaughter.

2d. It is not admissible in any case, where the weapon used was a murderous one, and the intent was to kill.

3d. It throws no light on the state of the prisoner’s mind at the time of the homicide—the character of the communication alone affording evidence on that point.

He quoted numerous precedents in support of these positions.



Mr. Parker replied that the defence intended to show not only the fact of the adultery at the time referred to, but acts of adultery continued from that time down to the time of the communication of the fact to the prisoner. He argued that the fact of the long existence of the adulterous acts furnished additional aggravation, and that the question whether there had been cooling time or not was one for the jury to decide. He claimed that there was not a case on record, whether the question of insanity was involved or not, where this evidence was excluded. Numerous cases were cited to show that such evidence was admissible, and its proof regarded as furnishing justification.

Mr. Tremain replied that he did not intend to permit the gutters of Syracuse to be dragged to obtain this evidence, when the lips of the man charged with the offence were sealed in death. He ridiculed the cases cited on the other side as mere newspaper reports, without authority in unsettling the well known principles of law as laid down by Sir Matthew Hale, and other luminaries of the law.

Mr. Tremain referred to the Sickles' case, and read from Mr. Brady's speech to the jury on that trial to show that Sickles killed Key while the latter was in the act of signalling the wife of Sickles.

Mr. Brady interrupted Mr. Tremain to say that in that case all the facts in regard to the adultery were admitted in evidence; and that evidence of the fact was admitted that in Key's pocket were found two keys, one of which fitted the outer door of the house of assignation in 15th street, and the other the inner door.

Mr. Tremain briefly replied.

The Court ruled that the evidence was inadmissible on the ground that the alleged adultery was no ground for homicide, independent of the question of insanity, and that the alleged occurrence was no part of the communication to the prisoner.

*Charles P. Cole*, sworn and examined by Mr. Mitchell—Reside in Cortland village; am an editor and publisher of a newspaper. (Mr. Brady said the defence had put this witness on the stand to establish Hiscock's guilt, and to show their *bona fides* in making the offer by the previous witness. He had numerous other witnesses to establish guilt to a demonstration.)

Mr. Tremain objected to this remark as uncalled for and improper on a solemn trial like this.

Mr. Brady said the defence would offer no further evidence on this point. The offer was rejected under the previous ruling of the Court.

*John R. Hawkins*, sworn, and examined by Mr. Mitchell—Reside in Syracuse; am a tinsmith; I called on General Cole with Mr. Rogers last spring on business when he was in the windmill; I had a conversation with him in regard to going in business with him; he seemed diffident and moody; lost in thought; for a moment after the subject was broached, he talked rational enough, said he would call and see me again; did not do so, and did not recognize me afterwards, although I saw him every day; he appeared like a moody and sullen fellow.

Cross-examined by Mr. Sedgwick—I mean by sullen, he looked glum, cross; never spoke to him before that; had seen him frequently, Mr. Rogers introduced us; witness here detailed the conversation.

*James M. Gould*, sworn, and examined by Mr. Mitchell—Reside near Aurora, Cayuga county; my former wife and Mrs. Coles's family are indirectly related; saw the prisoner on the day of the homicide get on the cars at Syracuse; the cars were standing across Salina street; he approached from the south and I from the north; knew the prisoner well; I observed as he came on the platform of the car an unusual and singular appearance; he seemed very pale and downcast; oblivious to everything surrounding; looked at me as he came up the steps, and gave no sign of recognition; he went into the car, turned round and came to the threshold, and asked me if all were well at home; I said they were, and he went back; his appearance struck me at the time; I did not see him afterwards; the cars soon after moved.

Cross-examined by Mr. Sedgwick—I live at Jamesville; knew prisoner ten or twelve years; saw him in Syracuse during the war, and afterwards three or four times in 1866; I was not going on the cars; his countenance was not flushed; looked pale and sad; I did not inquire as to his health.

*George Raynor*, recalled, and examined by Mr. Mitchell—Knew prisoner two or three years before he went to the war;

at the time of the homicide his general character at Syracuse, as far as I know, was good.

Witness was not cross-examined.

Mr. Mitchell said the defence would introduce no further evidence of a general character unless it was controverted by the prosecution.

Mr. Hadley here offered in evidence, a paper marked exhibit "C," as follows:

"I learn from undoubted evidence that L. Harris Hiscock has forcibly endeavored to dishonor my wife in my room, obtaining opportunity thus to do, through proposed friendship to me.

"He has often since made her the subject of his obscene attacks in my absence in the army, and by thus implicating her has ruined her peace and my own. God has been my help, and I ask not vengeance; but he shall abase himself to her and to me, and beg his miserable life of me. I hold her not entirely innocent, for she should have told of it without fear of him; but he is guilty of outrageous treatment and persecution of her, for which he shall make apology to her and to me. Mary, I know all the circumstances fully, and it is as I tell you, so do not blame Mrs. Cole unjustly if you hear anything about it.

"Your aff. cousin,

"GEORGE W. COLE."

The defence here rested.

Mr. Tremain announced that upon consultation with his associate counsel he had concluded to withdraw his objection to the reception as evidence of the paper referred to yesterday (marked Exhibit B), and which is the paper that John L. Cuyler testified he had received from the prisoner and left with Mr. Hadley, and which was not opened till last week. Hereupon Mr. Hadley read the paper as follows:

"I acknowledge of my own free will I have had criminal intercourse at Syracuse, with Mr. L. H. Hiscock at various times, and first about the fall of 1864.

"I make this acknowledgment of guilt to my husband, hoping by truth and frankness to obtain forgiveness. I acknowledge that since that time I have, when my husband was at home, seldom permitted him those favors due in married

life more than once a month, though he has never refused my slightest solicitations to such favor. I acknowledge he has often asked me the cause of such coolness, and complained of its injustice.

“MARY B. COLE.”

“My criminal connections with Mr. Hiscock were at my own house, and only took place after repeated calls, and at first against my remonstrance.

“MARY B. COLE.”

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REBUTTING EVIDENCE BY THE PROSECUTION.

*John Morgan* sworn, and examined by Mr. Smith—I reside in this city; have been chief of police for seven years; I was foreman of the Grand Jury in June last; I heard all the testimony that was given; John L. Cuyler was examined as a witness.

Mr. Parker objected to the testimony as to what Cuyler swore to, for the reason that the prosecution is bound by his answers.

Objection overruled by Court.

Cuyler was not interrupted except when he digressed from the subject of examination; he was asked to state all he knew upon the subject; he was allowed to state before he got through all that he had attempted to state when he had digressed; I heard Mrs. Cuyler's testimony; to my knowledge, she said nothing upon the subject of Cole's having said that he was afraid of a man that followed him, &c.; I think that Cuyler testified that when they arrived at the Delavan House the prisoner went off to see Henry Barto.

*Timothy Sullivan*, examined by Mr. Smith—I was a member of the Grand Jury; John L. Cuyler was allowed to testify as fully as he chose to.

Mrs. Cuyler said nothing about the prisoner having spoken of a man following him on the Monday before the homicide, &c.

Cross-examined by Mr. Parker—I do not remember of his being stopped at times; I think Mrs. Cuyler was stopped two

or three times by the District Attorney; he also asked if she had stated all she knew; she was asked as to the relations between Mrs. Cole and Hiscock.

*Robert Morris*, examined by Mr. Smith—I was a member of the Grand Jury; Mrs. Cuyler said nothing about the prisoner speaking of having been followed by a man, &c.

*William C. Marshall*, examined by Mr. Smith—Was clerk of the Grand Jury; witness testified the same as the last; the case was for several days before the Jury.

*John M. Bailey*, examined by Mr. Smith—Am assistant District Attorney of this county; I was present before the Grand Jury; I kept minutes of the evidence of some of the witnesses, and among them of John L. Cuyler; he testified that the prisoner said on leaving Syracuse, that he would see Barto, and try and have an interview with Hiscock and make him confess; on the way down, prisoner wished him (Cuyler) to go with Mrs. Cole to the nearest hotel, the one that had lions at the door, he did not know its name; that was all he said; he said he might go down and not stop at all, and that if he did not stop, he (Cuyler) might go on; I see nothing in the minutes about his getting off the backside of the train to avoid being seen, and that he felt ashamed and disgraced; I have looked over the testimony of Mrs. Cuyler; I find nothing about her saying that prisoner had alluded to a man following him, &c.; the examination was so taken that I could take down everything.

Cross-examined by Mr. Mitchell—Did not take it in shorthand.

*Henry Smith*, examined by Mr. Tremain — Am District Attorney; I was present during the entire time before the jury, except of the first two witnesses; Mrs. Cuyler's testimony was taken, part by Mr. Bailey and part by me; she testified nothing about the prisoner having said he was followed by a man, &c.; she was not interfered with at all in making her statement, except when she digressed from the narrative, and then at the proper time she was allowed to go back and state what she wanted to; Cuyler testified that when near Albany prisoner had wished Cuyler to take his wife to the nearest hotel; the one with lions at the door; that he (prisoner) would try and see Henry; he might conclude to go on, and if they did not find him at the hotel they could follow him.

Cross-examined by Mr. Mitchell—I think my manner to Mrs. Cole was pleasant; think I kept the case before the jury about a week; was commenced on the 13th of June; indictment presented on the 24th; Mrs. Cole was twice before the jury, and Cuyler three or four times; I examined witness on the question of adultery, and on every point connected with the case.

*Alonzo Atkins*, recalled and examined by Mr. Smith—I have seen *this paper* before. [Exhibit A, letter written by Mrs. Cole.] This was taken from the prisoner; the memorandum in pencil at the top was then on it; it was taken from the prisoner while in his cell; prisoner wrote a note to his wife while he was in the station house, and gave it to Mr. Summers; his wife came in about an hour and a half after.

Mr. Smith read the memorandum in pencil on the top of the paper. [It is of a character not proper for publication.]

*James C. Manning*, examined by Mr. Smith—I reside in Syracuse. Am in the leather trade. I have known the prisoner or of him since 1861. Don't know that I ever was introduced to him. Knew him from boarding at the same house with him. I have not often seen him since his return from the war. I last saw him before the homicide in Mann's grocery store. It was a day or two before the homicide. Prisoner stood in the store. When I went in the prisoner started to go out. I stopped and spoke to him; I asked him about his wife and children. He said his children were well. Cannot state what he said about his wife. I said I had not noticed them riding of late; he said he had disposed of his horses. We then separated; he appeared very sober; I noticed nothing else about him or his manner.

*John H. Mann*, recalled and examined by Mr. Smith—At the time I sold the pistol to the prisoner he looked rather sad and dark complexioned; I noticed nothing further about his eye or manner.

*Homer Williams*, examined by Mr. Smith—I live at Syracuse, am conductor on the Central railroad; I know prisoner by sight now since I came here; prisoner was a passenger on the 4th of June last; a lady sat by him; he laid in his seat in a careless way; I noticed once or twice that they laid with the head of one upon the shoulder of the other; he lost his ticket at St. Johnsville; he looked for it; I found it in

my pocket; he said I had punched his ticket twice; this conversation was this side Schenectady; I noticed nothing in his personal appearance.

Cross-examined by Mr. Mitchell—I had nine or ten cars on the train; I did not sit by him; it looked as if he was a tired man and had rode a long way; did not notice to see whether the woman was veiled; I had not seen him before.

*Erastus M. Oulds*, examined by Mr. Smith—I live at Syracuse; am Deputy Revenue Collector; I heard of the homicide on the night that it occurred; I knew the prisoner by sight and reputation; I last saw him before the homicide, on the 3d June, at the Globe Hotel, in the forenoon; he sat in the reading-room; was doing nothing; I spoke to him about smuggling goods from Canada; I proposed to go there; he said that if I would go there, find the goods, and telegraph to him he would come there from New York; the terms were that we were to divide equally the amount growing out of a disposal of the goods; nothing was said about the expenses; the conversation lasted ten or fifteen minutes, though I have not stated all of it; I saw nothing about his appearance different from his usual manner; he was sitting during the conversation.

Cross-examined by Mr. Mitchell—I noticed no indication of his want of sleep; I knew he was in the government service, and to be in New York when I was to telegraph him.

*Henry L. Duguid* examined by Mr. Smith—I live at Syracuse; am in the saddlery business; in 1866 I was Secretary and Treasurer of the Empire Wind Mill Company; first knew the prisoner in May, 1866; he went into the employment of that company in July, and remained for six months; he had charge of the correspondence; kept the pay roll and paid off the hands; saw and conversed with him nearly every day; he was pleasant and gentlemanly in deportment; never saw any depression; was always free in conversation; supposed his health was good; heard no complaints from him; he took interest in the business and seemed confident in its success; I frequently saw him after he left the mill; I never discovered any change in his manner; continued to have business transactions with him till May, 1867; I attended the bazaar; he performed the character of an Indian Chief during its existence for several days; he called at my store on business

quite a number of times ; I last saw him on the day before the homicide ; he stood on the steps of the Globe Hotel, in fore part of the day ; we exchanged salutations ; I noticed nothing peculiar about him.

Cross-examined by Mr. Mitchell—I am a director in the Windmill Company ; Hiscock was a director ; after prisoner had left, he called to get his pay ; we have not paid him for his services ; have refused to pay him because he had neglected to conduct the business right ; we owed him for borrowed money ; when he quit us we owed him about \$2,900 for borrowed money. He never complained to me of his bad health.

Direct resumed—I refused to close the account because the prisoner has sold some mills in North Carolina that we heard was a bad account, and we wanted him to collect it before we settled with him.

*Allen Munroe* examined by Mr. Smith—I reside at Syracuse ; am manufacturer of flour and salt ; have been a member of the Senate ; have known the prisoner eight or ten years ; saw him during the war, and while he was at the windmill, of which I was a director ; he was assistant superintendent of the mill ; duties were to sell machinery and pay the men ; saw him once a week ; heard him once speak of having fallen from a horse and been injured ; that his disease was the piles or something akin to it ; he was of pleasant manner and good spirits ; was energetic in character ; it was a new business then ; he was not very free in conversation ; was sprightly in movement and a fast walker ; saw little of him after he left the mill.

Cross-examined by Mr. Mitchell—In January I voted to discontinue his employment ; we had no social relations.

*Harman W. Van Buren*, examined by Mr. Smith—I reside at Syracuse ; have a tannery and store ; lived there forty-three years ; first knew him by sight ; when he entered the windmill I was president of the company ; I used to go to the mill daily for awhile ; after that three times a week ; prisoner conducted the conversation and was very active at it ; he was very hopeful of the business ; I never heard him make any complaint of his health ; he appeared to be in good health ; was very free in conversation ; never saw any indications of depression.



Cross-examined by Mr. Mitchell—I never heard of the question about not paying him.

*James F. Boshall*, examined by Mr. Smith—I reside at Syracuse ; am in the lumber business ; first knew the prisoner in 1858 ; we were partners for one year, and then I sold out to him ; he continued it till 1861, when I bought him out ; while we were partners he was very sociable and pleasant ; saw him after his return from the war ; I did not notice any change in particular ; he spoke of his fall from his horse : said his bowels were much injured ; have not seen much of him since the war.

*Dudley P. Phelps*, examined by Mr. Smith—I reside at Syracuse ; am Treasurer of Savings Bank ; first knew prisoner in 1866, when he was at the windmill : knew nothing but that he was a healthy man, of good spirits, free in conversation, hopeful in business ; had a quick and energetic step.

*William Gilbert*, examined by Mr. Smith—I reside at Syracuse ; am a lawyer ; first knew prisoner after his return from the war ; have seen him at his house, at my office, at windmill, and in the streets down to the spring of 1867 ; saw nothing particular in his manner ; was pleasant ; never heard him complain of ill-health ; I was subpoenaed here by the defence.

[Witness told of a transaction in which prisoner said he was pecuniarily irresponsible, though his wife had money.]

Cross-examined by Mr. Parker—I have not taken an active part in the prosecution ; I have been sued for crim. con.

*Edward Drake*, examined by Mr. Smith—I reside at Syracuse ; am a stove-dealer ; have known the prisoner since 1861 ; I went out in the same regiment with him—Twelfth New York ; I was a lieutenant ; we were as intimate as officers usually were ; prisoner left the regiment in August or September, 1861 ; he did not associate with the rest of the officers as freely as most men ; saw him at Syracuse during the war ; he was at our reception supper in July, 1863 ; he appeared as usual ; next saw him in 1866 ; he desired to get into business ; I noticed no change in him ; his step was firm and decided.

*John F. Moschell*, examined by Mr. Smith—I reside near Syracuse : am a farmer ; first knew the prisoner in July, 1861 ; I was in the service, in the Third New York Cavalry ; was Captain ; prisoner was transferred to my regiment in September, 1861 ; I resigned in spring of 1863 ; I entered the service

again after that ; have not seen him since ; he was sociable and pleasant ; I saw him most every day ; his appearance was the same all through, except when he was sick in hospital ; he got up a trial of speed in 1863, between his horse and another ; a purse of \$100 was got up by others ; one heat he only permitted his horse to run ; I did not see any depression of spirits at any time when he was well.

Cross-examined by Mr. Parker—He was promoted major over me, I being a senior captain ; when he was sick in 1862, he complained of acute pain in the stomach and of piles ; he seemed depressed.

Direct resumed—I have no feeling against prisoner.

*Dennis Driscoll*, examined by Mr. Smith—I first knew prisoner in 1861 in the service ; I was captain in the same regiment ; he was polite and gentlemanly ; not very talkative with other officers, as I judged from his natural manner ; he complained of the superior officers ; thought there was a clique to effect promotions in the regiment ; I saw him after the war ; he appeared social and friendly ; saw nothing peculiar.

Cross-examined by Mr. Mitchell—I sympathized with him about the promotions in the regiment.

*Henry A. Barnum*, sworn and examined by Mr. Smith—Reside in Syracuse ; am a publisher of a newspaper and Inspector of State Prisons ; was Brigadier and Brevet Major-General of Volunteers in the army ; knew prisoner prior to '61 ; we went out in the same regiment ; I was captain ; remained with him from May till September ; he was a man of retiring disposition and manners ; saw him again in May, '63, in Syracuse ; it was at the ceremony attending the reception of our regiment ; he appeared as usual ; saw no change in him ; he participated in the festivities ; next saw him in the fall of '66, on the sidewalk in front of the Franklin Block, Syracuse ; we spoke of our service and promotions ; he spoke of the date of his brevet commission ; he seemed robust ; observed nothing unusual in his spirits then or on any occasion since ; saw him only in spring of '67 ; saw him at the bazaar, and afterwards at Washington in April ; don't remember of his ever speaking of his injuries.

Cross-examined by Mr. Mitchell—I was more intimate with Mr. Hiscock than Cole ; did not see Cole from '63 to '66 ; there

were a couple hundred people present at the 12th regiment supper ; Cole made no speech or toast ; am one of the owners of the Standard ; I never wrote an article in regard to the subject ; I have no control over the articles except those of a political character.

*George L. Maynard*, sworn and examined by Mr. Smith—Reside in Syracuse ; am postmaster there ; first conversed with Cole in '58 or '59 ; conversed with him but once, in April, '67 ; it was at the Arcade, in regard to a letter ; the General said it was a joke on him from some of his comrades ; said he had matched them ; his conversation was cheerful ; more so than in '58 ; saw nothing unnatural.

Cross-examined by Mr. Parker—Only had two conversations with him ; was not intimate with him ; was intimate with Hiscock ; regarded him as one of my best friends.

*Henry Reigel*, sworn and examined by Mr. Smith—Reside in Syracuse ; am County Judge of Onondaga county ; have known Gen. Cole twelve or fourteen years slightly ; saw him after his return ; before the war was closed ; it was on Salina street, two or three years after the war began ; friends were around him talking about the war ; he related his exploits ; told about shooting bushwackers ; I told him I wouldn't care about picking off men singly, but wouldn't mind shooting at the heap ; he said that was the pleasantest business he had been engaged in ; he liked the service ; I saw the prisoner the day before the homicide, on Franklin Place ; he was walking to the west.

Cross-examined by Mr. Parker—Don't know whether the conversation was before or after his injury.

*Judge Allen* recalled—District Attorney asked the witness as to whether the prisoner was cool after the homicide. Mr. Brady objected and argued the testimony inadmissible at this stage. Mr. Tremain replied ; objection sustained.

*James E. Pomfret*, sworn and examined by Mr. Tremain—Am a physician and surgeon ; resided at Albany ten years ; am Surgeon-General of the State ; am a professor of Physiology in the Albany Medical College ; have had two years and ten months service in the army ; entered as surgeon of a regiment ; when I left was surgeon-in-chief of the 2nd Army Corps ; my experience as a surgeon has been quite extensive ; a continuance of service in the army commonly produced de-

pression of spirits ; at first the men appeared elated ; afterwards privations and toils made them more depressed ; there is nothing indicative of insanity in an officer in camp making trinkets ; it was common ; the men who returned from the Chickahominy campaign were emaciated and sallow ; have had experience in treating rebel prisoners in hospital ; constipation was common in the army ; I attributed that to diet ; sometimes they had diarrhoea followed by constipation ; the effect of an injury to the ganglionic system is not well understood ; it presides over nutrition ; the primary effect would be to impair the functions of the heart, and if it went far enough the heart would cease to beat : there is nothing in the protrusion of the bowels, or retention of the urine, calculated to affect the brain.

Mr. Tremain here recited facts in regard to prisoner's business, his services in the army, his injuries, his temperament, his health, his wife's confessions in regard to improper intimacy, his excitement, his subsequent conduct up to the time of the homicide, the circumstances attending it ; and he inquired of the witness what was his opinion as to the state of the prisoner's mind.

Mr. Brady objected to the question on the ground that it should have referred exclusively to the physiological facts. It is a history of the case bearing upon all the facts succeeding and preceding the homicide, and the witness should not be required to swear to Mr. Tremain's speech.

Mr. Tremain said the counsel, at their peril, must see that the hypothetical question is in precise accordance with the evidence. He had endeavored to make it so, and in entire reference to the rule as laid down by the Court of Appeals. No particular part of the question had been pointed out as objectionable. He claimed that the hypothetical question put to the physicians by the defence was not based upon facts, but this was no reason why he should have objected to it. If the facts are not correctly stated in the question, the answer of the witness will be of little value.

The Court ruled the question improper, because it embraced everything upon which the jury has to pass, and that it should have been confined to the physiological facts, upon which a man of science could give an opinion as an expert.

Mr. Tremain then modified the question, commencing with

the injuries of the prisoner, detailing their effects while in the army, and the subsequent homicide.

The witness answered—That's a pretty long question, and I am not sure I remember all of it.

At the witness' request that portion of the question referring to the prisoner's condition while at Dutch Gap was re-read.

The witness answered, "I should think he was sane;" the general rule in regard to melancholia is that it continues and grows worse; if not cured it might terminate in dementia; the physical cause remaining I should not expect a sudden recovery of melancholia; it does not tend to assaults, but to listlessness and retiring from society and brooding; patients do not attend to business; melancholy is produced by facts outside the person, melancholia by causes within the person; in all cases I have seen the expression of countenance is marked and continues all the time; melancholia unfits a man from attending to his ordinary business.

Mr. Tremain here repeated a long hypothetical question put by Mr. Brady to the medical witnesses for the defence, and asked the witness if these symptoms are consistent with themselves.

A. I should not expect to find all those results from any injury to the body; should not expect to see a disposition to whittle things; it would require something more; I should not expect to see continuous activity.

Cross-examined by Mr. Brady—My observation of insanity has been little; a few cases under my observation, and a few in my own practice; have probably seen twenty or twenty-five cases; my own cases numbered four; my own cases were all melancholia; all males in adult life, between twenty-five and thirty-five years; the causes that produced the cases were unknown to me; found them in the Soldiers' Home; and when called to them and saw them they had received no physical injuries; two of them had indigestion; don't know whether that tended to produce melancholia; constipation for six months would have a depressing effect, with no tendency to melancholia; if piles, protrusion of the bowels and suppression of the urine with acute pain, continued several months, were added, I don't think they would produce melancholia.

Mr. Brady then described injuries to the sternum; gangli-

onic system and two of the vertebral, and asked if these were added, what would be the effect?

Witness answered they would not produce melancholia.

No injury of the viscera alone would tend to melancholia. I have seen cases having all the symptoms described and not having melancholia ; you may have symptoms of a tendency, but you can't have the symptoms of a disease without getting it.

I don't know the cause or causes of melancholia ; I can't describe any injuries of the nervous system that would have a tendency to melancholia ; the standard writers do not thus profess ignorance of the causes of melancholia ; a diseased state of the abdominal viscera affects the brain ; never saw the brain of an insane man examined ; in my four patients, the first that I saw was an indisposition to take any part in the conversation with the men around them ; they were low spirited ; complained of ill-health ; thought they were very sick and would never get well ; would fail to come to dinner or to respond to the wants of nature ; they seemed to be able to answer a question, but they did not lead in conversation ; one of them thought the men were against him and that there was something peculiar about him that made the men avoid him ; I can't recall the particulars of each case ; they were taken away by their friends ; I know nothing of their previous history ; one of them was sallow and they had a depressed look. If Gen. Cole had all these things, I don't know but he would have melancholia.

Mr. Brady here repeated the symptoms attributed to Gen. Cole, and asked if they did not constitute a case of melancholia.

A. Not without continuity and persistency—long enough to satisfy me it was not the result of a transient cause. In one of my cases I decided it was melancholia in ten or twelve days ; it generally comes on gradually, it may come on suddenly ; mania may come on or not suddenly ; marked change of character is one of the most important symptoms of insanity ; hereditary tendency would increase the probability of insanity.

Mr. Brady here described alleged symptoms in case of prisoner after both accidents, and asked if these did not include all the symptoms in witness' four cases.

Answer—I think not ; to me the want is unfitness for the ordinary duties of life ; this unfitness must exist in persistent melancholy ; in transient melancholia, which follows excesses, it is not indispensable ; a monomaniac might attend to his ordinary business, but a melancholiac could not.

*Dr. James E. Pomfret*, testimony continued—Cross-examination by Mr. Brady : I graduated in 1858 ; was a student for ten years before that ; I preached during some of the time, but was not ordained as a minister ; I preached in the Universalist Church.

Direct resumed by Mr. Tremain—The pulse is frequently increased by the excitement of a medical examination ; the proportion of cases of insanity arising from physical causes is small ; it is said to be from nineteen to twenty-one per cent. of all cases ; a majority of cases cannot be attributed to any known cause.

The question is put to the witness involving the supposed physical and mental condition of the prisoner.

The witness answers that he does not regard the existence of all those features as a probable cause of insanity.

If there was an entire change in character and disposition, and in all his conduct (and as stated by the witness), there might be ground for a belief of insanity ; I don't mean to say that in my belief a person might become suddenly insane without any previous evidence of it, and become suddenly sane. I believe that in the case of a person subject to melancholia and confined in jail the disease would be aggravated. I think it sensible for a person having the piles or prolapsus of the anus to amuse himself with whittling, &c., while lying in bed. Hypochondriasis is defined to be one of the divisions of melancholia ; I do not consider "hypo" as a species of insanity.

Cross-examined by Mr. Brady—I am 42 years of age : I cannot say from my own observation whether chronic melancholia is intermittent ; I have not read books since yesterday ; I met the counsel last evening.

*Jacob S. Mosher*, examined by Mr. Tremain—I reside in Albany ; have been a practicing physician since 1863 ; am Professor in Albany Medical College, of Chemistry and Medical Jurisprudence ; I yesterday heard the question put to Dr. Pomfret, (question again read to witness ; being the state-

ment of the alleged condition and change in disposition, &c. of the prisoner before, during, and since the war, of the communication made to him about his wife's conduct and her relations with Hiscock, the prisoner's conduct thereafter, and the perpetration of the homicide, his declaration and conduct then) ; I do not, in that statement, discover any evidence of insanity ; (the counsel here read the question heretofore put to witnesses, reciting the complaints and physical condition of the prisoner during the war and since then up to the present time, and the examination made of him in the jail, and asked the witness if all those physical injuries indicate insanity to be the result.) The witness answered that constipation and protrusion of the bowels could not result from the paralysis ; I do not think that breaking of the sternum would produce these results to the bladder and anus ; I should look for an injury to the abdomen ; I do not think it possible for hemorrhage to produce enlarged condition of the veins of the intestines ; the detention of the urine would result from a paralysis of the bladder ; most soldiers had diarrhoea or constipation as the result of their method of life.

I do not think the breaking of the breast bone would produce insanity or do injury to the ganglionic system. That system is well protected ; it lies in the back part of the body with numerous viscera in front of it ; if the disturbance of that system was so great as to affect the bladder and lower intestines to the extent of paralysis, I should think it would affect the lower limbs ; that system is intimately connected with the spine ; I do not think there is any such disturbance in this case of that system as to affect the brain. In the case put by the two questions, I do not think they prove insanity ; it would be stronger evidence of insanity if it did not have the elements of the physical causes that it contains. I should think a confinement in jail in such a case would aggravate melancholia, if the person was afflicted with it, and that, too, if the person was charged with murder.

I think melancholia makes a man retiring and not aggressive. If the causes continue to exist I should expect that melancholia would result in dementia or some other form of insanity ; I do not know what can be meant by a "tendency to dementia ;" a man is either demented or not ; if the injuries were the cause of melancholia I should not expect to see him



recover so long as the injuries remained ; I was in the army temporarily in 1864 ; I frequently saw soldiers whittling out trinkets or making them of clay ; nothing irrational in it ; melancholia produces disinclination and inaptitude to business ; in this case, as stated with reference to prisoner's conduct in business, it is strong proof that he did not have melancholia.

Cross-examined by Mr. Brady—I studied my profession from 1850 before I got my diploma in 1853 ; I have not given my especial attention to the subject of insanity ; I have read books on the subject, have seen such cases as came up in my practice, and have visited some asylums ; I never saw a case of melancholia ; my knowledge of it is derived from books ; I have never seen books that did not disagree in many points ; melancholia may result from a constitutional tendency, and also from moral and physical causes ; among the moral causes might be embarrassments in business or difficulties in domestic life ; I think that in cases of hereditary insanity in a family in nine out of ten cases the general belief would be that the person had insanity, whether he had or no ; it is the rule that the descendants are afflicted with insanity ; as to the physical causes, melancholia may be produced by blows on the head, and affections of the liver ; there are not many diseases of the viscera that will produce it ; I believe a man may recover from insanity in twelve hours, but not from melancholia ; I do not think that delusion is necessary to the existence of melancholia ; I think there is an incapacity to do business in melancholia ; it may produce a homicidal tendency ; not ordinarily ; generally it tends to self-destruction ; I never heard of transient melancholia ; the disease of uremia may produce insanity ; I do not think that any general rule can be laid down as to the benefit of confinement in cases of insanity, each case must depend on itself ; melancholia may result from suppression of hemorrhage ; to find melancholia I should look for melancholy, low-spiritness, suspicions without basis and with no condition of his physical condition to account for it. The appearance of his face would be a material element. Then, with an inaptness for business I should say he had melancholia.

Direct resumed by Mr. Tremain—I think a person afflicted with melancholia would not have a desire for sexual inter-

course. I should expect the appearance of the face to be fixed. Melancholia is of slow development. The homicide tendency would remain till it was satisfied. The disposition would be to kill without any motive for it. It would not long continue when the person had any ground of suspicion to action. The symptoms of sadness and dejection would continue in melancholia. The expression will be so marked that any physician can see it.

*John Swinburne*, examined by Mr. Tremain—I am a physician ; forty-seven years old ; been a physician since 1846 ; am now Health Officer of the Port of New York ; was Professor of Anatomy in Albany Medical College ; have had considerable surgical practice and experience ; had some experience in the army ; was with it during the whole Peninsular campaign in 1862 ; have had ordinary amount of cases of insanity ; I heard the two questions ; my experience is, that I have never seen any injury outside of the head produce insanity ; the causes stated in those questions would not, in my opinion, produce insanity ; the prolapsus of the anus and the affection of the bladder would not produce insanity ; among the soldiers in the service either constipation or diarrhoea would be common ; I do not see in the case stated any injury to the ganglionic system, and if none I do not see how it would produce insanity ; that system is deep-seated and well protected, lying near the spine, and the injury to the breast bone would not affect it ; I do not think an injury to that system would affect the lower limbs ; I should not think the prolapsus of the bowels and condition of the bladder any indication of insanity ; in the case put by Mr. Brady, the evidence of physical injuries would not strengthen the proof of insanity ; the confinement in jail of a person subject to melancholia from physical causes would aggravate the difficulty.

Cross-examined by Mr. Brady—I have seen perhaps ten cases of melancholia ; there are two causes of it, physical and moral ; among the physical are old age, change of life in females, and injuries to the head ; moral causes are family troubles, jealousy, and disappointed affections ; I have never known or read of a case of melancholia resulting from physical injuries ; persistent change of character is an important element to determine melancholia ; in insane asylums all the inmates but such as are furious are permitted to have society,

recreation, &c., and not kept closely confined ; it has been found that lunatics heretofore kept confined in houses and almshouses remained insane, and therefore asylums were provided ; I think no injury to the spinal chord could affect the brain.

*Thomas Hun*, examined by Mr. Tremain—I am a physician, and have practiced for thirty-eight years ; am 59 years old ; have been a Professor in a Medical College for 17 or 18 years ; have been physician for 10 or 12 years of City Hospital ; I heard the questions put by Mr. Brady ; the physical injuries of themselves would certainly not prove any such thing as insanity ; I do not discover any affection of the ganglionic system ; do not consider that the affection of the bladder and anus show any injury to the ganglionic system, or produce insanity ; the effect of such injuries resulting from falling from a horse might affect the system, so far as a shock is concerned, and that might result in death ; the absence of the physical injuries would more readily explain the result of insanity if it existed ; confinement in jail on a charge of murder for the term of ten months of a person afflicted with melancholia would result in his injury ; I heard the long question put by Mr. Tremain ; I do not discover in the hypothesis contained in that question any evidence of insanity.

Cross-examined by Mr. Tremain—I have seen cases of melancholia, perhaps ten or fifteen ; some were sent to asylums ; the symptoms of melancholia are change of character, aversion to society, sadness of face, neglect of business, and sleeplessness.

Any depressing thing, physical or moral, will tend to produce insanity ; either hereditary or constitutional tendency is almost always necessary to produce insanity ; personal or family afflictions tend to produce insanity ; an imperfect elimination of the urine sometimes produces stupor and sometimes delirium ; melancholia is not an unusual type of insanity ; acute mania may come on suddenly ; the idea of confinement in a prison would not be beneficial.

Direct resumed by Mr. Tremain—Melancholia is comparatively a disease of slow development ; in asylums there is more hope of cure if the patient is received at an early stage of the disease ; as a general rule the patient is sleepless ; a man attending to his business with activity is opposite to the idea of his laboring under melancholia.

## CLOSE OF REBUTTING EVIDENCE.

Mr. Tremain announced that the rebutting evidence on the part of the People was now closed.

## TESTIMONY BY THE DEFENCE.

*Marcus Manley*, recalled and examined by Mr. Mitchell—I have seen prisoner's treatment of prisoners in the war ; treatment was kind ; I doubt if he was of a boastful character.

*Dr. Palmer*, recalled—Cole's treatment of prisoners was kind. I would not say the prisoner was a boastful man. He was energetic in his manner.

## CLOSE OF THE TESTIMONY ON BOTH SIDES.

Mr. Mitchell announced that the testimony on the part of the defence was closed.

It was then determined that two counsel on either side should be permitted to sum up the case.

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ARGUMENT OF JUDGE PARKER.

Mr. Parker opened the case for the defence. He referred to the deep responsibility he felt in the case, where the life of the prisoner was at stake. If he should fail in a proper discharge of his duties he should never forgive himself. The prisoner was a stranger in the city, a stranger to all of you. The press had done him injustice—some of them—by prejudging the case. Time had done much to correct these things, and these efforts to corrupt public opinion have signally fallen. The whole case is a remarkable one. The proceedings before the Grand Jury were extraordinary, but a more extraordinary feature is that the District-Attorney is assisted by two private, eminent counsel. This is unusual. In difficult cases it is usual to procure the services of the Attorney-General, but when private counsel are employed the object is to prosecute the indictment in a vindictive spirit.

The brother of the deceased is here, and our witnesses are invited to visit his room. There were no such circumstances in the case of Sickles, who was prosecuted for killing Key, and it is to be regretted that a similar course is not pursued here. The bitterness of counsel shows the spirit of this prosecution. Notwithstanding all these disadvantages, we look to you for protection.

The prisoner, though a stranger to you at first, will never be a stranger again. A young and active man, having a wife and children whom he loved, gave these up, and hazarded his life and all that was dear to him in entering the army. He entered it as a captain and left it as a Major-General—promoted through all the intermediate grades for his gallantry and services; no man of fairer reputation and braver impulses ever lived. He who has risked his own life in many a battle to save his country, is now to be tried by that country for his life. He is charged with murder. I agree with the learned counsel on the other side that this is either willful murder or no offence at all. It is either murder or an excusable homicide, committed under such a state of mental unsoundness that he was not responsible for the act.

The District-Attorney, in his opening, told you that the prisoner came behind the deceased in a cowardly manner and discharged the pistol against his ear. The testimony of Mr. Whittaker shows that the deceased was shot in front. Was that the proof given in the Grand Jury room? I don't know, for it was *ex parte* testimony. No one was there to call out all the facts. It shows you how utterly unreliable this examination was. The examination of Cuyler and his wife was referred to, with no one to cross-examine them, and when called here to testify as called out by both sides, it shows that the Grand Jury is not to be relied on for the true facts. If they would mislead the District-Attorney, they would mislead you or me.

The prisoner did not seek to escape. Only the criminal does that. What did he say? Two witnesses—Mr. Whittaker and Judge Allen both testify. The testimony of these witnesses was here referred to. When the officers came in, he burst into tears, and as far as he is traced, that was his condition. This is all the proof in regard to the homicide.

The military services of the prisoner were then referred to.

He went to the war a genial and happy man. He loved his family and they loved him. Upon the field he was the bravest of the brave. I would ask no higher tribute to his character than the testimony of the gallant soldiers who have come here from all parts of the country—the privates, lieutenants, captains and majors, up to the highest rank, like Maj. Gen. Weitzel. It is a high tribute to his character. They come here voluntarily from Massachusetts, Rhode Island, Ohio, and other distant States. They knew him to be a brave and honest man. Counsel then referred to the prisoner's wound in 1862; he was taken to hospital and there he remained. But long before he ought he came out and went into active service. When it became necessary to resume his duty he was the first in the field. He raised a regiment of colored cavalry. Counsel objected to our showing how much he might have made by transferring it to another State. But he refused. When other colonels said it would take three months to get ready for active, he replied twenty minutes. This shows the character of the man. (The testimony of Mr. Fox in regard to his second injury was here read to the jury.) The prisoner would leave his sick bed, in spite of constant pain and delirium at times, yet he was always at the post of duty, when it was possible for him to drag himself into the saddle. Counsel then referred to the perilous Tarborough raid, and the prominent part taken by the prisoner in this important and successful raid. The prisoner was fifty-four hours in the saddle. It was so exhausting that men and horses fell by the wayside, and many a gallant soldier perished. Yet the prisoner in his crippled condition remained in the saddle till he sunk by the wayside. He continued actively in service until the fall of '63, when his surgeon insisted on his leaving. But he was soon back again. All the evidences of injuries were still upon him, and there they still are, according to the testimony of Dr. Hamilton, who says the only wonder is that he ever lived to this time. Dr. Hamilton's examination, at the jail, of the prisoner's injuries, the fracture of the breast bone, the protrusion of the bowels, the palsied bladder, the constipation, &c., were referred to as corroborating the testimony as to his original injuries. We have abundant proof that the prisoner's whole character was changed. Some 30 witnesses tell you of these changes. It is no pre-

tence got up for this trial. It was known and talked of at the time in the army. Dr. Manley's testimony shows the prisoner's condition from 1862 till he was discharged from the army. He tells you the hemorrhages and moroseness increased. His sleep was poor, and yet he was perfectly temperate. He drank no liquor and used no tobacco. Dr. Manley says the prisoner was unusually jealous—thought he was not appreciated. This shows the delusion. Gen. Weitzel says he was regarded as one of the first Colonels in the service. Dr. Manley says his mind was unsound then, he talked childish. The doctor says the protrusion of the bowels was greater than he had ever seen, read or heard of. He says his character was entirely changed from a genial man to a gloomy and morose one, and all the physicians tell you this was a characteristic of insanity. We have called ten physicians, four of whom had personal charge of the prisoner, and all these four, those who knew his condition best, prove that the prisoner had the particular form of insanity known as melancholia. Not one of the physicians called on the other side had ever seen the prisoner. But Drs. Fowler, Smith, Rice and Palmer knew him when a genial man, and knew him as a broken down and changed man.

The counsel then referred to the testimony of the various witnesses for the defence, showing the prisoner's condition, his abstracted manner, not speaking to his friends, his complaints of his head, his wild eyes, his agony of mind, and all this before the disclosure of his domestic ruin. The witnesses on the other side have utterly failed to show a different state of things. They were intimate political and personal friends of the deceased. They did not notice the change in the prisoner, but they had not opportunities to judge. Our witnesses did notice it. The directors of the Windmill Company did not notice it; but it turned out that this Company owed the prisoner \$2,900 for borrowed money, and he had to take a note for eight months in part payment. They had refused to pay him for his services while in the employ of that company because he took such extraordinary risks. Mr. Gilbert's testimony was referred to. He was a lawyer, and when asked if he had been sued for seduction, replied "no sir;" but when asked if he had been sued for *crim. con.*, the very offence of which deceased was guilty, was obliged to answer

that he had. These are pretty witnesses to sustain this tottering prosecution. One of their witnesses said, at the reception of the 12th Regiment, prisoner had given a toast and made a speech. Gen. Barnum testified that he did neither.

Counsel then described the condition of the prisoner just before the homicide. All these calamities existed previous to the discovery of his wife's guilt. He had noticed the change in his wife, and that was all. When asked on Tuesday preceding the homicide, by Hiscock, when he was going to New York, he first suspected something wrong. He looked Hiscock in the eye, his countenance fell, and it was evident there was something wrong; he turned upon his heel and walked away. He asked Mrs. Cuyler about it, and she, not wishing to have a scene, smoothed it over as nicely as she could, saying it was only a flirtation. This was Tuesday. He went to New York, and while there something awakened further suspicion and therefore he started for Syracuse. The state of his mind in New York at that time is described by three witnesses. There was a glare in his eye; he looked at his acquaintances and did not speak to them; the waiters at Sweeney's Hotel gazed at him and made fun of him; his mind was abstracted; he appeared unoccupied; the change was so marked that the witnesses said they would never forget it.

Something aroused his suspicions and he started for Syracuse; Lieut. Hutchinson met him on the Hudson River train; he was writing; his look was wild; his hand was up to his head; Lieut. Hutchinson could not engage him in conversation; he would rise and stand with his hand to his head for fifteen minutes; he went to the platform and there he stood; Hutchinson followed him, suspecting he intended suicide; at last he came in, and the second time he went out and stood for half an hour; the attention of the passengers was directed to it. We next find him at Syracuse. He goes to his wife and tells her his suspicions. She tells him all—no, not all. She writes the first paper; she had been ruined by Hiscock. The next confession was more full; and there he stands a ruined man. What was the effect of piling this mountain of misery upon the prisoner, with his already shattered mind? It is insanity itself. And there, all of Sunday, Monday and Tuesday, till eleven o'clock, he stands an utterly ruined man,



with every hope blasted. Mr. Green described his condition. The prisoner's look was such as he had never seen before.

Other witnesses describe his horrid appearance at the table of the Jervis House on Monday ; his daughter for one moment only recalled him to consciousness ; he put up his hand to his head with a forced smile and then left the table. He reproved Mr. and Mrs. Cuyler for not informing him of what was going on. But not one word of unkindness was ever spoken of his wife. Deeply as he felt his shame, all hopes destroyed, the love he bore for her, and the fact that she was the mother of his children, to this hour he has never uttered a word against her.

The counsel then read Mrs. Cole's first confession. He said that his wife was none the less polluted on account of the reservation she made in that letter. On Monday she goes further. Counsel then referred to exhibit B.—her second confession. This comes before the Court after it had been excluded under objection by the defence. This is a conclusive acknowledgment.

Counsel then read the second confession, and asked what would be the effect of such a disclosure even upon a sound man. But what could be expected of a man whose mind was shattered and broken down by melancholia ? Counsel then referred to the testimony of Mr. and Mrs. Cuyler. Was there ever a more frank and intelligent witness than she ? No witness could be found whose testimony shows more truth than Mr. Cuyler's. Counsel then defended them against the attacks made so unwarrantably upon them in connection with their testimony before the Grand Jury. The proof is that the prisoner took no food during those three days, nor did he sleep for three nights. And then here are two children. What is to become of them ? The General concluded to take his wife and children to Brooklyn. He never intended to shoot Hiscock. He telegraphed to Mr. Barto to come at once. An answer came from Mrs. Barto, replying that he was in New York or Albany. It was Barto he sought, not the deceased. She had ruined and disgraced him, and he would take her to Brooklyn. They were going for a permanent stay, as is proved by what Mrs. Cuyler put in Mrs. Cole's trunk. Cuyler goes with them. The prosecution themselves have proved prisoner was going to New York. The arrange-

ments to go there were all made. But then he had the shame that bore him down, and he fancied every man he met knew of his disgrace, and he told Cuyler to get out at Albany at the nearest hotel.

They came on the same seat, she closely veiled, and he sad and dejected and strange in his manner. Cuyler takes her into the hotel. The prisoner comes in by another door. Their names are registered first; the prisoner's afterwards. Cole wants to see Barto. Cuyler goes to the Capitol. Barto is not there; he finds him at the house. It is too late to take the boat, and they will take the late train. The prisoner, with characteristic kindness, sends Cuyler to stay with his wife, and he finds her reading the Bible for consolation. The prisoner goes out to get the air; he strolls into Stanwix Hall with no idea of taking Hiscock's life; but suddenly he comes upon him, and unable to control himself he shoots him down.

Who will dare to condemn the act? I wouldn't take the judgment of a corrupt court of two hundred years ago. I have met with no pure man who would condemn it. The prisoner is in no way accountable. He was clearly insane. An insane man can commit no crime, and is incapable in law of committing a crime.

The counsel here quoted the case of the People against McCann, and read from the opinion of Judge Brown. The prosecution must establish sanity, and if there be a doubt as to the fact of killing or of sanity, the prisoner must have the benefit of the doubt. Counsel supposed the insanity of the prisoner had been so clearly proven that an intimation would be given by the other side that the trial should stop. The evidence of Dr. Hammond was referred to. Unlike the other physicians, he made insanity a specialty. He hears the facts of this case and says it is insanity. Before Dr. Hamilton had examined the prisoner at the jail, Dr. Hammond described his condition. He had told of the paralysis of the bladder, and afterwards Dr. Hamilton makes the examination and finds his situation to be as Dr. Hammond described. Dr. Hamilton swears that the homicide was an insane act. Dr. Rice, a physician of much experience in insane cases, tells you this was melancholia, and the act was an insane act. Dr. Hamilton, one of the ablest of living physicians, tells you the insanity was such as to make him irresponsible. Dr.

Sherfy does not hesitate to say this was a case of insanity; Dr. Bolton says he has no doubt that it was melancholia, and so does Dr. Palmer. Eight competent physicians, who had made insanity a study, swear it was insanity.

The other side has introduced but four physicians of this city, not one of whom had special knowledge on this subject. Dr. Pomfret had had but four cases of melancholia, and these at the Soldiers' Home. Dr. Mosher, an able man, whose knowledge of insanity was obtained from books alone, contradicted Dr. Pomfret as to the symptoms of his four patients constituting cases of insanity. Dr. Mosher never saw a case of melancholia. Dr. Swinburne, an able surgeon, had not made insanity a specialty. Dr. Hun had more experience than all the others; but his testimony confirms our views of this case.

The counsel for the prosecution, in their questions, have all left out of view the alarming fact that an aunt and two sisters of the prisoner had been insane, and the mother was in such a state of nervous excitability that she was as far gone as she could be without being insane; and none of these physicians would have been questioned on this point if the defence had not called it out. They had testified as to the effect of the announcement of his wrong to his family, and that if he should suddenly meet the author of his wrongs, it would aggravate the tendency to insanity.

Mr. Parker said that he insisted that the witnesses for the defence asserted positively their opinion of the prisoner's insanity. The witnesses for the people did not give such a decided opinion. Our witnesses spoke of the appearance of the face of the prisoner as being the strongest evidence upon this point, and four or five of our witnesses had seen themselves that appearance. The counsel for the people have omitted to direct the attention of their witnesses to several important features that we claim are important elements in determining the question of insanity, such as sleeplessness, want of food, the meeting of Hiscock, and above all hereditary insanity in the family.

The question for the jury is to determine the prisoner's insanity at the time of the homicide. It is not necessary to prove that the prisoner had long been affected by it. If the derangement of his faculties did not occur till that moment

when he met Hiscock, and if at that moment he did not have control of his will, then he is not responsible for what he did.

The counsel here cited authorities to sustain this point. He quoted Bishop and Archbold.

It is said that the purchase of the pistol is evidence of premeditation. But it is immaterial whether it was bought for self-defence or self-destruction, or to take the life of Hiscock. Any of these suppositions is not inconsistent with the belief of insanity. The medical witnesses say that insanity is not at all inconsistent with design. A reference to Bishop on Criminal Law shows that a man may be insane and yet execute his purposes with great sagacity. But the circumstances under which he bought the pistol must be considered. He bought it openly in the day time, in a public store. He had reason to fear danger to his own life. In all such cases there is great danger that the adulterer or adulteress may take the life of the injured husband. This illicit intercourse had been long continued; it had continued since 1864, and the reasonable supposition is that the purchase of the pistol was to protect his own person against apprehended violence.

But as to the medical testimony, it should not be forgotten that we have produced two witnesses to one upon the other side, and besides our witnesses have had greater opportunities of seeing the prisoner and learning the case than the others. But put it upon the ground of the relative number of witnesses, and how can you fail to entertain a doubt, at least, upon the question of sanity. And by the principles of our law, all doubts must enure to the benefit of the accused. In all cases thus far tried in our country, the jury has in every instance acquitted the prisoner, and this jury cannot be the first to reverse the practice. Men charged with this kind of offence are not low, base men, like thieves and murderers, but men of high tone and character—men that do not break down, but uphold the laws of society.

But it is said that there is a popular prejudice against the plea of insanity, that it is interposed where it ought not to be, and that it ought to be received with disfavor. But upon that point I desire to call your attention to the opinion of some eminent writers. The counsel read from authorities, and to prove that experience has shown that results have very generally shown the correctness of medical opinions as to insanity

where those opinions have been sustained by verdicts; while convictions in defiance of such opinions have frequently been shown to have been wrong and the parties shown to have been insane. In the case of Mary Harris, at Washington, she was acquitted upon very slight evidence of insanity, and it has since turned out that she has become an inmate of a Lunatic Asylum. In the case of the negro Freeman, so nobly defended by Governor Seward, he was convicted, and yet subsequent events showed him to be insane.

In this case, the prisoner at once, upon learning of his wife's guilt, sent for his relative, Mr. Barto. His wife's disgrace had just been developed to him. He sent for Barto, her nearest relative, that some arrangement might be made. Like a generous man, he wanted to treat his wife kindly. He sought Barto that there might be an honorable and quiet separation.

Witnesses have been inquired of as to the effect of confinement in jail. Our witnesses say that it would be beneficial. Lunatics are sent to asylums that their tendencies may be restrained. The prosecution have not attempted to prove his condition in jail.

I said that it was hardly possible that Mrs. Cole had confessed the whole matter. No woman would under the circumstances. She in the first paper confessed a part and more in the subsequent one. In the latter one she acknowledges of her own free will, and in it prays forgiveness. She admits the coldness with which she treated her husband and admits its injustice.

It was decided in England years ago, and when adultery was not considered so heinous an offence as now, that if a husband slew the adulterer when caught in the act, it was but a slight offence, and now it is held to be justifiable homicide. The law now allows a man to defend his life, his house, his property and his family, even by taking life. It is upon the principle of self-defence. Does it make any material difference whether the adulterer be caught in the act or not? What difference does it make in principle? Does it not come with just as overpowering effect in the one case as the other? Does it not produce the same effect upon the mind and passions? Where was the difference in effect upon the prisoner's mind, whether he caught Hiscock in the act, or whether it was revealed to him as it was by his wife? Does it not in either

case bring the same agony to his mind? In cases of death of relatives, we are bowed down by grief; but how much greater must be the grief and agony to a man who has lost his wife by her dishonor! I am ashamed to know that adultery is not punished by our law. The law of God does punish it, and the same as that of murder. By the Jewish law the adulterer was punished by being stoned to death, each throwing a stone.

It is said that our Saviour intended to pardon the offence of adultery, by telling the woman to "go and sin no more." But our Saviour was not acting as a legislator. If the offence is not punished with death in this country, it is because it is supposed that the husband shall be the protector of his own family, and shall vindicate his own honor.

Let us look at a few cases. In Philadelphia a few days ago, John W. Smith shot Carter, because the latter had persuaded Smith to marry a victim of his seduction. It was done with premeditation. Some slight evidence was produced and Smith was acquitted, and with the concurrence of the Judge.

Daniel E. Sickles killed Barton Key by shooting him. He shot him for having seduced his wife. The proof of insanity was only such as to the slightest extent, and Sickles was acquitted.

In 1856 Jarzo was tried for shooting Nally. Nally had seduced his sister. He was acquitted.

Another case was that of Mercer, who shot Huberton for seducing his sister, and he was acquitted.

In Indiana, Daniel W. Cole was acquitted for shooting the seducer of his wife.

In less than a year, at Washington, Johnson was acquitted for killing the seducer of his wife.

Another like case was that of Morrison, at Washington, for a like cause.

In San Francisco, Newbern shot McArdle for dalliance with his wife, and was acquitted.

There have been several cases of brothers shooting the seducers of their sisters, but how much more stringent is the case of a husband shooting the seducer of his wife!

Every one of this jury is a man of family. Upon your return home if you shall find the destroyer there, would you

not avenge the wrong? If you did not would you not fail in the discharge of your duty?

I am happy to find that the laws adapt themselves to our condition. The law is made as we go on in the progress of civilization. When a party takes a course contrary to this rule, it will find a severe load upon its conscience. I read to you an authority sustaining this public sentiment and this method of action under it. That authority asserts that the moral sentiment of society sustains this practice, and approves of the husbands punishing the offence of adultery.

I trust this jury is not to be the first to change the practice in this class of cases. I know the influence of the deceased and his friends and the public press. But the clouds that have gathered about this case are disappearing. Who has been in jail so long as the prisoner has been in a case like this? The lost liberty of the prisoner cannot be restored to him. I plead for a man who has spent the best years of his life in the service of his country; I ask not for sympathy, but for justice. He has defended you and me while he was in the service of his country, and I ask now for justice to him. I plead for his life and ask for justice. I plead for his two daughters who now have no mother. Their only protector now is their father. I plead too for that poor misguided woman who has fallen so low. She feels her own degradation. She knows she has contributed to the death of one man. She does not want another taken on her account. I plead too for the brothers of the prisoner who have shown so much honorable love towards the unfortunate prisoner. I plead too for the family, which is the substratum of society. Let that family be protected in every form it is brought before us. All the moral world feels a deep interest in the protection of the sanctity of the family circle.

I know you will do your duty. I know what public sentiment is. It has manifested itself in this very court room, whenever opportunity has furnished. I leave the prisoner in your hands and know you will do what your consciences approve.

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## MR. SEDGWICK'S ARGUMENT FOR THE PROSECUTION.

Mr. Sedgwick opened the argument upon the part of the prosecution. He began by saying that he knew that he need not seek to impress the jury with a conviction of the importance of the case. He felt sure that they were fully conscious of it and would act accordingly.

In June last a Convention met in this city to revise the Constitution of this State. The deceased was sent here by a large vote of his constituents as a member of that Convention. During the evening of that day his life was taken. The deed was a public one, and done openly. Immediately upon its commission, the perpetrator sought to justify his act. On the very next morning the newspapers contained careful and studied defence of the act. It was not then asserted that the act was one of insanity. No pretence of that kind was then set up. The defence then was one of simple justification. The prisoner is now on trial for that deed.

The press in this city and elsewhere denounced this act. It did so because it justly denounced the idea of every man taking the law in his hand, and avenging his own wrong. That press only reflected a just public sentiment. I see no reason therefore for the denunciation by the opposing counsel of the course of the press.

The counsel has alluded to the presence at this trial of the brother of the deceased. Is it strange that he should be here? Less strange will it appear when that brother is here by the subpoena served upon him by the defence, and a subpoena that directed him to bring with him all possible correspondence or other articles that it might be supposed he had obtained from the effects of the deceased. That brother too has been most unworthily charged with attempting to tamper with the prisoner's witnesses.

I call your attention now to the facts of the case. As presented on the part of the People it is one of clear premeditated murder. The provocation for it is proven to have occurred on the Sunday before its commission. He is proven to have purchased two pistols at two different times. He expressed anxiety in regard to the efficiency of the weapons. He was then of sound mind and of cool deliberation. He spoke rationally about his family and other matters. This is no evidence of a



purpose to commit self-destruction. I believe that this fact shows the purpose of committing the murder under the circumstances that should give *edat* to it. He did not expect to find enemies in the cars.

Look at the circumstances upon his arrival at Albany. He did not go to search for Barto. He sent his wife with Cuyler to the Delavan House. He went directly to Stanwix Hall, where Hiscock was. The latter stood in the public clerk room, talking with friends and smoking a cigar. The prisoner approached him with deliberate steps, raised the pistol and shot Hiscock upon the spot.

There is no direct proof that the prisoner saw Hiscock before he entered the north door, but the circumstances show that it probably was so. The ordinary entrance to the hotel is by the Broadway side, where all the doors and windows are open.

The fair inference is that the prisoner could not recognize Hiscock in coming upon him as he did, with the back of the latter to him. There is no sort of proof that the prisoner went there to look at the register.

Immediately upon committing the homicide the prisoner stated his defence as it has been given to you by the proof. I claim that his language then shows his premeditation and his sanity. It was in keeping with the message that he left at Syracuse upon leaving there. All this I claim shows a premeditated and predetermined purpose to slay Hiscock.

In our country, with all our courts and trials, civil and military, every accused man has the opportunity of defence. But in this case one man was both the judge and the executioner. And here the only witness was the prisoner's wife, and we can judge of the character of her credibility. We all know that "Hell has no fury like a woman scorned."

Man is not always the seducer. We have learned from the history of our first parents that woman may sometimes be the first seducer.

In this case, I assume to assert that it was one of deliberate and cowardly murder—it was the act of deliberate assassination.

Such is the case on the part of the prosecution. What is the defence?

The early history of the accused is of little consequence, except as bearing upon the question of his character. His

early life shows much of that vacillation that is here set up as proof of his insanity. He changed from the practice of medicine to keeping a drug store, and from that to entering the lumber business.

I desire to detract nothing from the military reputation of the prisoner. But the true soldier, upon returning to civil life, does not set up his military services as an immunity for crime or lawlessness. The prisoner must defend himself from the accusation of crime like any other citizen.

I call attention to the opening of the prisoner's case by Mr. Hadley. It was therein stated that upon his (prisoner's) return, he was a changed man; but it was reserved to a later period to prove that he became a changed man while he was in the army. It was asserted that on the 27th of May the prisoner saw something suspicious in Mr. Hiscock's manner; but the Court will advise that this fact was not proven. The evidence was admitted not to prove the fact, but only to show the condition of the prisoner's mind. And such is the legal rule with reference to all the evidence as to his wife's declarations. The opposing counsel was not ingenious and honest, when he asserted to you that these were facts to be taken by you as having been proven.

It will be seen that the communications made by Mrs. Cuyler alluded only to "flirtations," and to nothing more serious. She referred the prisoner to Montgomery Pelton for further intelligence, and yet Pelton has not been produced as a witness. The fact is that there was nothing in that alleged communication. Pelton could not give any information upon the subject. Pelton has been here during all this trial, and has not been called. If Mrs. Cuyler's conversation had given him reason for suspicion, would he not have seen Pelton, who lived but a mile distant?

What was Cole's object in coming to Albany on the fatal Tuesday? The opening, by Mr. Hadley, says that the sole object was to see Barto, and at Albany. That was not so. He came here solely to see Hiscock.

I will now pass to the character of the testimony adduced by the defence. I will take up the question put by Mr. Brady to the several witnesses, and upon which has been based the opinion of the medical witnesses. That statement assumes that the prisoner was injured *twice* in the army. I claim that there

is no proof of but *one* injury. The surgeon of the prisoner's regiment, Doctor Palmer, knew of but one injury. The extent of the results of the injury is overstated in the question. Dr. Palmer's statement is quite different from that made in the question. It is so with reference to the constipation of the bowels, the prolapsus of the anus, suppression of the urine, gradual emaciation, a continued moody disposition, an inclination to dementia and sleepiness.

The counsel claimed that the proof in these respects did not support the assertions contained in the statement of the question. He asserted that not only were the statements overdrawn, but that all the manifestations of dispositions and disease exhibited by the prisoner are no evidence of insanity. Many of these manifestations were to be observed among many, or at times all the soldiers in the army. As to some of these characteristics, the prisoner evinced them *before* the injury to him, as fully as he did afterwards. The counsel elaborated his position upon these points to a considerable extent, and claimed that he was supported in it by all the testimony in the case, as well that produced by the prisoner as by the prosecution.

As to the alleged proof of a change in his disposition, from being jovial and social to being moody and sullen, there is no evidence that such change ever occurred while he was in the army or after he returned. The only instance in anywise tending to the proof of such a change was his conduct and declarations when he was at Washington and had failed in his application for the office of Assessor of his district. His disquiet or indecision in regard to his business pursuits after the war was in nowise singular or unnatural in the conduct of any man similarly circumstanced. His persistent employment in the windmill is the best evidence of the soundness of his mind.

When the medical witness gives his opinion upon the question alluded to, he must do it upon the assumption that all the facts exist as stated in it, and to the full force as therein alleged. If the proof of these alleged facts fail and the facts do not exist, or to the extent and force asserted, then the opinion ceases to be of any value.

The fact that the disposition of the prisoner changed as the disease did, supports the opinion of Doctors Hun, Mosher and

others, that the disposition is due to the physical disease, and not to any unsoundness of mind.

When a man suffers from an apprehension of which there is no real fear, then he suffers from delusion. As in jealousy, if a man suspects his wife without proof and against reason, then he has a delusion and may be insane. But when he acts upon proof of his wife's infidelity, he is not governed by delusion or madness. He acts from the same impulses that govern all sane men in every like circumstance of life. What he may do, he does with reason and intelligence.

The testimony of Dr. Hamilton, based upon his personal examination of the prisoner last week at the jail, shows that his physical injuries still exist. To that must be added the fact of the injurious results growing out of his long confinement. And yet Dr. Hamilton swears before you that he is now a sane man. How can this be accounted for, that he is now sane, while all the injuries that are given as the cause of his alleged insanity still exist?

We have put a hypothesis upon our side. We have put the question that contains it to some of the best physicians in the country, who are wholly disinterested. Those physicians have given their opinion that the prisoner was not an insane man. The defence has not brought forward against them medical witnesses and had them answer that question. That fact proves that even those witnesses dare not swear to his insanity upon that hypothesis.

We will look now to the evidence going to prove his insanity. On the day before he left Syracuse. On that day his wife made the confession contained in paper marked exhibit "A." It appears that parts of it were written at different times, the postscript in pencil mark having been written at a time subsequent to that in which the body of it was written. The paper charges the deceased with a crime, not seduction, but the crime of rape; a crime punishable by the laws of the land; a crime of deep disgrace and one liable to severe punishment. When the prisoner committed the homicide, he rested his conduct upon that paper. That paper did not involve his wife's shame. A crime had been committed; and a crime that needed no private vengeance, for the law of the land provided ample punishment. It is not necessary to go back to the law of Moses or of feudal times to find author-

ity for self-vengeance against the perpetrators of such a crime, because the law of the land provides a remedy.

I do not believe so much in the seduction of women as some would assert. I believe that a virtuous woman has protection enough in herself and in her own conduct and honor. I believe that more women by their wiles and lascivious conduct have led more men astray than ever fell victims to the arts of the seducer ; and yet I would not fail to have the Legislature pass all proper and necessary laws to protect the virtue of woman.

The prisoner declared to witnesses on the night of the homicide that his wife had been *ravished*, not that she had been seduced, but had been *raped*. He believed that he had told the truth on that occasion. He believed that the offers of violence by the deceased had been resisted. Now why is it claimed that he has atoned a crime that the laws of society does not recognize ?

We will go back. How do we find him on the Monday before the homicide ? We find him in much the same condition as before. He purchases the pistol with coolness. The prisoner cohabited with his wife from Sunday morning to Monday night. He remains in the same room. He comes to Albany with her ; sits on the same seat, leaning upon each other ; they take rooms at the Delavan House ; a correspondence takes place between them while he is in the station-house ; she remains in the city for several days, and consults with prisoner's counsel. What inference can you draw but that they will, if he is acquitted, hereafter live together ? The race of Potiphar's wives still, I fear, abound in the earth. She received the news of the murder with entire coolness.

ut we will look at the second confession, made by the wife. That was of an entirely different character. That was unnecessary to show that deceased had been guilty of something for which the law furnished no redress. When do we hear of this second paper ? not till within a few days and after the commencement of this trial, and after all the preparation that had been made for this trial and defence.

If the story contained in the second paper be true, what would have been her conduct ? If that story be true, she has prostituted herself for years. If that were so, the history of all the world shows that she would have conveyed inform-

ation to her seducer of her husband's deadly purposes. And yet the husband and wife came to Albany in full sympathy and companionship.

What means these two different statements? Both were not true. She has lied therefore in one of them, and by the rules of law if she had lied in one instance, she is not worthy of credit in any. Why was the paper kept from the Grand Jury? It was necessary to change the grounds upon which the defence was to rest. I think there is evidence of the authorship of this paper potent upon its face. I think its style corresponds very much with that of a learned argument that we have heard in the trial of this case. The paper is a fraud. Cuyler is not to be believed as to the making of this paper. Sometimes in trials like this it is necessary to have a *creative* as well as a *destructive* genius. This paper speaks only of remonstrance on the part of Mrs. Cole. The paper of the day before shows more force. This paper has been manufactured for the purpose of this defence.

Mr. Parker has said that the prisoner is no base, but a high-toned murderer. And yet he came to Albany with full pretensions and under the false pretence of seeing Barto, and then coolly shot down the deceased. If such a "high-toned murderer" is to be let go, then don't hereafter visit the penalty of the law upon low estate.

I will refer to the medical testimony. These witnesses are to be weighed, not counted. Mr. Parker says they are to be counted, and that eight should outcount four. I venture to say that the testimony of Dr. Hun will outweigh all the stone-cutter doctors like "Dr." Manly. This Dr. Manly quit the trade of stone-cutting to pursue that of a doctor, so as to furnish employment to those engaged in the trade he had quit. I suppose that medical evidence is governed by the same rules that controls other kinds. I respect science, but I have little respect for that which makes an opinion to support the case he is called upon to aid.

I will refer to the law in regard to insanity, and how far a man is relieved from the legal responsibility of his acts.

The counsel quoted several authorities.

It is not every case of unsoundness of mind that frees a man from the responsibility of his acts. A man is responsi-

ble when he knows enough of the distinction between right and wrong to know the consequences of his acts.

Juries will do great wrong if they assent to the sickly sentimentality that seeks to find excuse for every crime that is committed. If you do we shall have visited upon us the old law of *Lex talionis*, and every man will become the avenger of his own wrongs. There will be no safety to human life or property.

I venture to say that if such defence as in this case had been interposed in any case but that of adultery, it would have been laughed out of court. The counsel do not believe that the defence of insanity has been made out. They only seek to use that as an argument to have homicides justified upon the excuse of adultery.

There is not a particle of truth in this case that any adultery has existed in this case. I have endeavored faithfully to present this case. If I have in any wise varied from the fact—if I have extenuated or set down aught in malice, it will be your province to set it right.

One personal allusion and I have done. I well knew the deceased. We were educated at the same school, we have practiced at the same Bar. He has left a fair name and an honorable reputation, which his friends are bound to maintain.

I could not deny the claim of his orphan child and of his brother to appear here in this case. I have no malice against the prisoner. If he is to suffer it is to be charged to his own acts and his own passions. We ask for justice, and that is all we can expect.

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#### CLOSING ARGUMENT ON THE PART OF THE PRISONER.

Mr. Parker submitted in writing the points upon which the defence should ask the court to charge the jury as matters of law governing the case, such submission being made now, that the Court might have them thus early to enable it to examine them. The points submitted were as follows :

First : That if, from the whole evidence in the case, the jury shall find that the accused committed the act charged in

the manner and form herein stated, and thereby produced the death of L. Harris Hiscock as herein also stated, yet if they shall further find that at the moment of his so killing him the reason and mental powers of the accused were so affected from any cause that he had not at the moment sufficient mental power to control his own action, he is not in law guilty of murder or any other crime.

Second : That if the jury believe from all the evidence that at the moment of committing the homicide the intellectual powers of the accused had become for the time obliterated through the overwhelming violence of mental excitement, or of physical or mental disease, or from any other cause, he is not in law guilty of murder or of any other crime.

Third : That if from all the evidence in the case the jury shall believe and find that at the moment of committing the homicide the accused was laboring under mental disease, and that in a paroxysm or sudden outbreak of this disease of the mind his reason and judgment were for the moment overwhelmed and suspended ; and while they were thus overwhelmed and suspended he committed the homicide with which he is now charged, he is not in the law guilty of the crime of murder or any other crime.

Fourth : That if from all the evidence in the case the jury believe and find that the accused committed the homicide, but at the time of committing it he was under the influence of a diseased mind, and was at *that moment* really unconscious that he was committing a crime, he is not in law guilty of murder or of any other crime.

Fifth : That if it is proved to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, and that such disease existed to such a degree that for the time being it overwhelmed his reason, conscience and power of self-control, and that the accused in committing the homicide acted from an irresistible and uncontrollable impulse, then the act is not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it, and the accused is not criminally responsible.

Sixth : That if the jury believe and find that at the time of the homicide the mind of the accused was in a diseased condition ; that the tendency of that diseased state of the mind was to break out into a sudden paroxysm of violence, and



that the subsequent act is so connected with the previous symptoms and indications as to cause the jury to believe that the outbreak was of such a character that for the time it overcame memory and reason, that then the act was the result of the disease and not of a mind capable of exercising the power of choice ; or, in other words, that it was the result of uncontrollable impulse and not of a person acted upon by motives and governed by his own will.

Seventh : That the killing of a human being by another, if effected under such circumstances that the *will* of the person slaying does not join with the act of killing, is not criminal. That an accountable act, without a vicious will, is not a crime. That to constitute a crime against law, there must be first a vicious will, and secondly an unkind act consequent on such vicious will.

Eighth : That where the defence of insanity is interposed to an indictment, as in the present case, and the homicide is admitted, it is for the prosecution to show the existence of those requisites or elements which constitute the crime ; and of these the sound mind and intention of the accused is the principal, and is to be established upon the trial as a part of the case for the prosecution.

Ninth : That the law does not assign a limit within which "cooling time" may be said to take place ; that every case must depend upon its own circumstances in that respect.

Tenth : That in order to constitute murder there must be on the part of the accused a purpose or definite design to destroy life, actuated by a malicious motive ; that the act must be premeditated or thought of and *determined* upon before its commission ; and these three ingredients can only exist where there is a mind with reflective faculties, capable of thought and consistent reason to form designs and conclusions.

Eleventh : That if the jury believes that the accused killed Mr. Hiscock, and that he committed the act under an irresistible impulse, the result of a diseased and distempered mind, which overpowered his will and took away his power of self-control and reason, then the defendant is not guilty of any offence.

Twelfth : That if the jury believe, from all the evidence, that from any predisposing cause the mind of the accused

was impaired, and that at the time of the killing of Mr. Hiscock he became or was mentally incapable of governing himself, in reference to the deceased, on account of the supposed debauch of his wife by Hiscock, he is not guilty of murder or of any other crime.

Thirteenth : That the law does not require that the diseased condition of the mental faculties which absolved from crime should exist for any definite period, but only that it existed at the time of the homicide.

Fourteenth : That in considering all the evidence in the case the jury should entertain a rational doubt upon the question whether, at the time of the homicide, the accused was under the influence of a disordered mind and unconscious of the nature of the act he was committing, it is the duty of the jury to give that doubt in favor of the accused, and they should find him not guilty.

Fifteenth : That the sanity of the accused is a necessary condition to constitute the homicide a criminal act, and that the prosecution are bound to establish to the satisfaction of the jury beyond a reasonable doubt that the accused was of sound mind at the time he committed the homicide.

Seventeenth : That the homicide being admitted and the defence being insanity, the accused is entitled to the benefit of any doubt resting upon the question of his sanity.

Judge Ingraham suggested that he thought the points could be abbreviated, for, as he regarded them at the moment, the first point embodied the whole of them.

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SPEECH OF MR. BRADY.

Mr. Brady addressed the court and jury, and began by reviewing the suggestion by the other counsel who had preceded him as to the importance of the case. He felt the embarrassment arising out of the fact that while he was well acquainted with the court and all the counsel in the case, he was an entire stranger to every one of the jury. But he hoped his case would be that of the extension of that hospitality to a stranger which has been so characteristic of the civilized world.

I know full well the duty and the responsibility of a prosecuting officer; but I know, too, the danger of such an officer of acquiring an intensity of feeling in the management of such a case that at times rise to a degree of severe hostility and even hate. Mr. Sedgwick has alluded to the honorable name of the deceased. But if he has died dishonorably that is not the fault of our client; it is the result of his own acts and conduct. If dishonor clings to his memory he is the author of it, as he is the author of that insanity which has afflicted the prisoner. If his conduct excited the prisoner to this deadly act, all the consequences be with him.

Good character is an element that always operates to the benefit of the prisoner, and besides it always creates a doubt in his favor.

Our law, where the defence of insanity is set up, is different from the English law. In England the presumption is that the accused is sane. But in our State, since the case of McCann, if a doubt upon that point is raised by the prisoner, he is to have the full benefit of that doubt, and the prosecution must overcome it by proof.

Mr. Hiscock was a man of position in public and private life, and therefore he should have been more cautious in his conduct. He fell in Stanwix Hall, not as Cæsar did in the Capitol; but as a man whose base conduct had brought the tragedy upon himself, and under circumstances which is justified by the laws of God and which he hoped will be by man. I was, therefore, the more astonished to hear the learned counsel stigmatize this act of homicide as an act of assassination. I was the more astonished to hear the imputation that an attorney of the character of Mr. Hadley had fabricated a paper in this case, and that a man like John L. Cuyler had been an instrument in carrying out the purposes of that fabrication. It has never been my practice to attack the character of a witness unless facts warranted it beyond all question. It is at all times unpleasant for a man to be a witness, and as such he should never be attacked without adequate cause.

The prosecution has denied to us to prove the conduct of the deceased, and they should not now have the audacity to speak of his high character, while they assail that of the prisoner and of the witnesses on his behalf.

Let us proceed to the history of the tragedy, as it occurred

at Stanwix Hall. A man approaches with a firm tread another reclining upon a column. The first presents a pistol—it is fired and the man falls. The first inquiry by a spectator is as to who are these parties. One has been a distinguished soldier, and the other an eminent lawyer, and at the time a member of the Constitutional Convention. They are or have been friends. Why did the one kill the other? What is the answer? The prisoner then gave the answer. He has been my best friend and has violated my wife. That is the answer. What would be your first exclamation. It would be that he deserved it; that he has met a just fate. That is the law of human nature, and no law is better settled in the consciences of all men. All the laws that society can ever make cannot take out of our hearts the instincts that God has put there. Among those instincts we find that of the purpose of preserving the honor and integrity of our family. Men have affections for domestic animals. When a ruffian purposes even to kick a dog, the instinct implanted in our nature is aroused to the protection of it.

From the scene as thus depicted to you, I go back to see who the man was that perpetrated this deed. This deed has been called one of bloody and dark assassination. It is said that it is not necessary to have it done secretly to make it less an assassination. But I say that no such act done thus openly was ever done except by a hired assassin, or by one governed by some great impulse that was marked by the traces of insanity, or whose existence is accounted for by some controlling provocation.

Upon the subject of insanity, we have brought before you learned and eminent physicians. We have from Dr. Smith the fact of hereditary insanity in the family, as proven in the case of the prisoner's sister. Doctor Post proves insanity in the family as developed in the sister, and also in an aunt of the prisoner. In the latter case, the insanity was not founded upon a delusion, but upon fact, that of the loss of a child. There is also proof that the mother of the prisoner exhibited melancholia. She had as she thought several diseases, and all tending to her speedy death. These facts show the disposition and tendency to insanity.

When the war broke out he had the character of a jovial and sociable man. He had a physique and a splendid intellect.

He possessed the elements of a fine soldier. He had the same spirit that actuated Washington, Napoleon the First and Frederick the Great. He felt that a blow was to be struck at his country, and he went out in defence of it. He went out as a captain, and served with fidelity and bravery. He was wounded in that service. But he remained with his command during all his sufferings and perils.

Seventeen witnesses have described his condition before, during and since the war. His geniality of temper continued with him till he received his first wound. But did he receive only one wound? The opposing counsel have sought to make it appear that there was but one. The first injury was received in the summer of 1862, the second in March, 1863, and during the fatiguing Tarboro raid. The two injuries are described by the witnesses Woodin and Fox. The proof shows his condition during this period. Early in 1864, the change in his mental condition was marked and distinct. I will undertake to show you, despite the assertions upon the other side, that every book upon the subject states that melancholia may be intermittent. It is equally absurd that a man afflicted with melancholia may not have pleasant moments, as that a man affected by simple melancholy may not, and as to the latter every man knows to the contrary.

The counsel here alluded to several cases within his own experience that have been witnessed in lunatic asylums, in which inmates have at times manifested upon certain subjects entire sanity, and when their malady would not be discovered till the one subject was touched which had been the cause or motive of their derangement.

The counsel continued his recital of the testimony that showed the great change in the prisoner's conduct and character. The change was so great that all looked upon him as a wholly different man.

What has been brought to countervail this testimony? Without intending to disparage them, but to more clearly identify them, I shall call some of them "windmill witnesses." What opportunities had they of judging of his character? They only saw him when he was actively engaged at his work, and when his mind was thus actively employed.

But on the other hand, I call your attention to the evidence of one witness, Mr. Rogers. This witness saw him at Wash-

ington while he was seeking an office. He tells you of the severe attacks upon his physical system under which he then labored, and his mental agony. The latter indicates a condition of utter hopelessness and despondency, equal to any that it is possible to see or hear of. The witness Fink speaks of his strange conduct in frequently passing him in the street without recognition, and afterwards denying the fact. Other witnesses speak of evidences of the same great change in him. Some of these were medical men, and men of high personal character as of skill in their profession.

Upon the subject of delusion, it exists when a man believes a fact to exist which does not. What was the delusion of the prisoner? At a time when the prisoner held a high and honorable position in the army, and was beloved by everybody, he supposed he was treated badly by his superior officers. He suspected the loss of General Butler's confidence, and was not disabused after having sent a person to the General, and he had denied entertaining any such hostility or suspicion. That was his delusion. During that period, to use the language of the witness, he was "childish."

As to the imputations sought to be thrown upon Doctor Manby, I believe at least that he is an honest man. He tells you of the great physical disability of the prisoner, and of his mental change. The Doctor spoke particularly of his despondency and gloominess. In his opinion, the prisoner inclined to dementia, and he then thought at times that he was of unsound mind. Doctor Roberts spoke of his condition in 1863. Doctor Palmer says that he always thought he suffered from melancholia, at the time and ever since. At one time he expressed fears of death, and that his services were nearly over. Dr. Rice discovered evidences of melancholia in 1864, and gives his opinion of the soundness of his mind.

As to the fact of the purchase of the pistols, the authorities show that while it usually indicates a purpose of self-destruction, it may at times tend to a purpose of taking the lives of others. Take the case of melancholia suffering under the impulse of an assault upon the honor of a daughter, the tendency of it would be to take the life of the assailant. Let it not be said that a man who thus defends the honor of his household shall be adjudged guilty of murder.

I desire to call your attention to the testimony of Dr. Ham-

mond. He has had great opportunities of learning the character of insanity. He regards an injury to the spinal chord as a powerful cause of insanity, and this despite the evidence of Doctors Swinburne and Mosier. He regards the prisoner's malady as "temporary insanity." In this he disagrees, it is true, with Doctor Rice. But names are non-essential. They both refer to and have in mind the same species of insanity. Doctor Sheffrey says that it is very difficult to classify these different kinds of insanity. He calls the disease melancholia. In this opinion Doctor Bolter concurs. Doctor Bolter is an old physician, and a respectable and intelligent physician. It is true that he comes from a country town, and my learned adversaries seem to cavil at this.

We find ourselves unable to please them; they carp at our witnesses from the large cities, and in this instance at one from the country. They are like the Irishman who caught a man in a church engaged in an act of profanation. The former said he could not pacify the aggressor, for the harder he hit him the louder he bawled.

I desire to call attention to the fact that not one of the medical witnesses introduced by the defence was asked the question whether they believed he was insane when the prisoner fired the fatal shot. Our witnesses swear positively to their belief of his insanity at that moment, and not one of their witnesses swear to the contrary. By the rule of law that proof makes out a case of insanity.

Having followed this case up to that period when this drama was about to open, I will now call attention to what transpired in May, 1867.

I begin within two weeks before the homicide. I call attention to the testimony of Mr. Matteson, who saw the prisoner at Sweeney's Hotel, in New York. The parties were well acquainted. The prisoner was in an abstract reverie. He was repulsed from addressing him because of the prisoner's manner. The waiters and others were attracted by the manner of the prisoner, even in the press of their business duties. Matteson left without speaking to the prisoner. What was the prisoner's condition then? He was alone in that Babel, gloomy, sad and melancholy. On the cross-examination, the witness said the prisoner was always eccentric. That, I assert,

is laid down by the writers as a slight evidence tending to show a disposition towards insanity.

The witness Hall spoke of meeting the prisoner in the street in New York. He noticed something very strange in his demeanor. He was sad, moody and singular, and I noticed it particularly.

Hutchinson's testimony will be remembered. He met the prisoner at the railroad depot, and rode with him to Albany. He noticed the strange conduct of the prisoner; his going upon the platform, putting his hand to his head, etc. This was on the Saturday night before the homicide, and on the same day he was seen at Sweeney's. It is said that the prisoner's conduct was due to a letter he had received from Mr. Pelton. We are asked why we did not produce Pelton, with that letter. We did not because Mrs. Pelton is a relative and was involved in the matter, and we did not feel at liberty to call her after we found that she had been at the room of the opposing counsel. We did not regard the letter as of so much consequence as to run the risk involved in calling the witness. But we allege that there was enough in that letter to craze him.

We next find the prisoner on the next day, Sunday, and to his conduct then we rely upon the evidence of John L. Cuyler. Suspicion is sought to be thrown upon the character of that witness, and especially because he came to Albany with the prisoner. Cuyler had married a relative of the prisoner, and could not, under the circumstances, have failed to comply with the prisoner's request, when the prisoner was laboring under influences more potent than the imaginations of ten thousand devils in hell.

On that Sunday Cuyler was called to see the prisoner at his room. He describes the prisoner's appearance and conduct. The prisoner asked the witness if he had often seen Hiscock at the house, and he replied he had. The prisoner added that he thought he had left friends behind him when he went with the army; that his wife had confessed; he spoke of his poor children; he said that he desired to die rather than live, he kept putting his hands to his head; he would sit in a chair, get up and then ask me a question; he made several exclamations about his children. The more the witness tried to quiet him the more uneasy he was; he wept considerably, his eyes were



red and bloodshot, and he showed a paper in the handwriting of his wife.

He also showed to the witness a paper in an envelope whose superscription was in his wife's handwriting, and that paper was kept sealed until it was handed to Mr. Hadley. This last is claimed to be a fabricated paper, and if fabricated the subject of perjury by Mr. Hadley and Mr. Cuyler—for both swear the paper was just as they had received it—the one from the prisoner, the other from Cuyler.

It is claimed that this paper was fabricated because the first paper makes out a case of ravishment, while the second was only a charge of seduction. Which charge I ask is the most serious, and which most likely to incite the indignation of a husband, and to induce him to commit a homicide. The husband does not hesitate to inquire which it was, whether it was done by force or not. The husband looks only to the libidinous advance and touch of his wife.

In either case we claim that the fact produced a loss of reason to the husband, and therefore he is not responsible for his act. No intelligent lawyer would have ever thought it necessary to bring in such a paper. But we brought it in because it was a part of the case. But this case was brought in by the prosecution by their counsel after it had been ruled out by the Court. They have, therefore, made it evidence. The assertion on their part, therefore, is mean and despicable, and unworthy the character of counsel. I am sorry that anything should have provoked such an assertion by the counsel.

I do not purpose to go through all the details of the testimony of Cuyler or Mrs. Cuyler. As to Mrs. Cuyler, you have seen her apparent candor, and her truthfulness, and her intelligence. Without any exception, she is the best female witness I ever saw.

On arriving at Albany, you will remember his excited and bewildered state. He did not even know the name of the Delavan House. The prisoner did not go with the rest to the hotel, for he did not want to be seen. The evidence is that since the Saturday night before he had eaten nothing. He had had no sleep, as I claim. There is no evidence that he had, and his appearance indicated he had not.

He declared that his purpose was to see Barto. He speaks of no other object. He had not that day spoken of Hiscock.

If he proposed to see him he would have spoken of it. He stated his object in the paper he left with Mrs. Cuyler. I ask, that if Hiscock had come into his room in Syracuse on that Sunday, and the prisoner had shot him down, would he not then have been justified, even if sane? I say he would by law. And this without any reference to what injuries he had received in the army, or their effect upon his mind. He knew that marriage was ordained by God, and that the protection of its sanctity was given to him by the laws of God and man. A man may protect his property, but it is claimed by the prosecution that he may not thus protect an injury to his heart. The law is that the adulterer may be shot down when detected in the act. Coming suddenly upon the adulterer as he did, he lost his will; his insanity came upon him, and he shot him down. I shall claim that the facts show a clear case of insanity.

According to the prosecution, all that he says as to his purposes was false, and that all the while he had the secret and stealthy purpose of a murderer. But it is said that Hiscock did not know his slayer, and that therefore the prisoner has not that satisfaction. This is not the conduct of a sane mind.

What is the medical testimony on the part of the prosecution? They differ among themselves as they do from our witnesses. They have seen but few cases of melancholia. One or more of them claim that unfitness for business is a necessary element of the disease. I claim that assertion to be wholly unfounded in fact. Dr. Mosier admits that he has never seen a case of the kind. His knowledge is wholly obtained from books. Dr. Swinburne asserts that no disease of the mind can arise from a simple injury of the body not connected with the brain. We claim that Dr. Hun supports our case. He describes the very symptoms that exist in this case, and then says that in such he should expect to find insanity. There must, in his opinion, be a hereditary constitution tending to insanity to produce it. In this case we show that hereditary tendency, and, therefore, this witness supports our case, though he differs from us in one or two particulars.

The counsel read at considerable length from several medical writers to support the testimony of the defence, as well as to controvert the positions taken by the professional witnesses on the part of the people.

And now I am about to close this case on the part of the prisoner. I claim that we have thrown so much of doubt about the sanity of the prisoner as to entitle him to an acquittal. It now becomes the duty of the prosecution to prove his sanity beyond all doubt. But the condition of the prisoner, from the time he left New York till the night of the homicide, is enough to show his insanity at the moment of firing the shot. If it is doubtful whether or not he was sane or insane, he is entitled to an acquittal.

If insane, then of course the law does not tolerate the idea that he should be killed; and if it is doubtful whether he was sane or insane (and that it is so in this case, no disinterested man can possibly fail to declare) then, by the laws of the land, it is his right to be acquitted. But you are to hear now in addition to the observations of my brother Sedgwick, the final argument for the prosecution by the distinguished counsel who is to follow me and who will have the benefit of those "last words" which it is supposed make so decided an impression upon the intellects of jurors as of others. I have a great admiration for the abilities of that gentleman. I know that he is very zealous in this case. I know that he enters into it with the same spirit and to the same degree as the other counsel who has addressed you on that side. But I have no fear, gentlemen, that any kind or any amount of eloquence, or any dissertation upon any branch of this case, can have the effect of swerving you from a just view of it, or of inducing you to condemn by your verdict what you know in your hearts, before God, would have been your own conduct under the same circumstances.

Yes, gentlemen, you are to be addressed in an elaborate and powerful appeal demanding the life of Gen. Cole, as a sneaking and deliberate assassin. You are to be asked to say that within a month or two, just after the blossoms shall have come upon the trees, just before their leaves begin to change and they put on the beautiful drapery of the American autumn, his children, who are motherless, when they go to his grave, shall stand over a mound beneath which reposes an executed murderer; and if you yield to that call, when you go to your homes and, under God's blessing and with grateful hearts, sit down to take your first meal under your own roofs, after this trial, you are to feel that you have assisted in mak-

ing that pilgrimage of those children to the grave of their father a terrible affliction. Gentlemen, if it should be so, then, according to the eloquent language of my friend Mr. Hadley, the General's countenance might blanch, though it never did in battle; his steps might tremble under nervous excitement, or he might say, like a soldier who during the rebellion I undertook to save from his fate, though he was a rebel, but who was executed on Governor's Island at the age of thirty-six years, "It will only be a muscular struggle, after all," and died firm and fearless.

It may be so, gentlemen, but if he does ascend the scaffold, he will have that to console him which no one can take away—he can say: "As I fought to protect my country, so I fought to protect my home. As I fought to preserve the honor of this native land of mine, so I fought to preserve my own and that of my family, to keep for my children an honorable position and an honorable name;" and he may add: "In the blow that I struck and for which I suffer, I strengthened the security of the homes of my fellow-citizens as much as I did when I struck against the enemy who would have laid waste our country:" and in view of his soldier's life, and all his life, he may say, in the language of one of the poets:

Whether on the scaffold high  
Or in the battle's van,  
The fittest place for man to die  
Is where he dies for man.

And so if he dies, he will die for you, and for all of us.

But, gentlemen, the hand never was made that would pinion to his side the right arm which wielded the sword so long and so bravely for his beloved and imperilled country—that hand does not exist on earth. He will go out of this courtroom, I trust in God, under the sanction of your verdict, on a fair discharge of your duty, with all the honor he earned and had, when he answered to the call of the country in 1861, and fought its battles at subsequent periods, while it had any to be fought. [Applause].

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## ARGUMENT OF MR. TREMAIN.

Mr. Tremain addressed the jury in behalf of the people. He said the solemn and responsible duty devolved upon him of closing the argument in this remarkable case. As the weary mariner approaches the land, so the jury would approach the conclusion of this trial. Yet he knew from the patient interest manifested by the jury that they would regard no time too long to enable them to arrive at a correct judgment. The importance of the case speaks for itself. 'The liberty and the life of the prisoner and the safety of every other life in this and other communities, the preservation of law and order and good government, aye the honor of this noble commonwealth are all involved in this case, and will be affected by your verdict in all coming time. The eyes of the world are upon you, and you will never again be called upon to perform so important a duty as now devolves upon you. See to it, ye guardians of the public welfare and safety, that you so demean yourselves that other unavenged murders shall not crop out from the blood of L. Harris Hiscock.

Human life is the most valuable and sacred right recognized by law. The law extends around it more protection than anything we possess. God alone confers it; and hence, from the earliest ages, the mandate came from the Almighty Lawgiver that the murderer shall die. In our own Criminal Code, but two crimes are punishable by death—the crime of deliberately taking the life of an individual, and treason against the State. The prisoner stands charged with lawlessly taking a human life. The counsel for the defence claims that he had the right to take that life. You need no other illustration than the scenes of this trial to satisfy you that the law protects life with extreme caution. Mark the different stages in this case. First the Grand Jury must indict; the prisoner is arraigned on the charge, and full opportunity given him for defence. The jury must swear to discharge their duty. The Judge is sworn to faithfully discharge his duty. The sheriff, the witnesses and the jury are all sworn to discharge their duty. The prisoner has the right to secure brilliant counsel, and summon testimony from all parts of the world; and then, if the verdict goes against him, a writ of

error allows the case to go to higher courts, where, if error has been committed, the case is sent back for a re-trial.

Then if all other resources fail, he can go before the Chief Magistrate, who may remit or mitigate the penalties of the law. How different was it with L. Harris Hiscock. There were no Grand Jury, and no counsel in his case. He was not permitted to open his lips, or to show that the woman herself was not an unchaste character. The prisoner becomes accuser, judge and executioner. L. Harris Hiscock had no time to send a message to his brother, to that gray-haired old father, bowed down with grief and a broken heart; no time to send a message of love to those dear little girls, now left orphans; no time to send up even a silent prayer to his Father in Heaven! And yet counsel have argued by the hour that the same law that protects the prisoner pronounces L. Harris Hiscock an outlaw. That such arguments should have been permitted, shows the care with which the prisoner is protected. These sentiments are a libel. If true, we had better fall back into that condition where the law of force and might could settle the question between them. There are no such inconsistencies in the laws of the State of New York.

Between ten and eleven hours have been occupied in this case by the prisoner and only about three hours and twenty minutes by the defence. If the defence did not answer them, it might be claimed that we considered them unanswerable. He proposed, therefore, to sweep away the improper considerations that have been presented in this case by the defence.

Mr. Tremain then referred to Mr. Hadley's opening speech as an adroit, bold and ingenious presentation of the prisoner's case. It was composed alike of irrelevant and the most dangerous sentiments ever presented on a criminal trial. All that referred to the prisoner's antecedents, Mr. Tremain argued, are to be set aside. All that refers to his meritorious service in the army, except so far as relates to his physical condition, has no connection with the case. He would not disparage faithful military service, but God forbid that this should give him immunity in crime. If the prisoner has rendered faithful military service, that is a consideration that should be addressed to the Chief Magistrate of the State. Here we have nothing to do with that.

History is full of examples of military chieftains who, after

war, could not control their own passions. Benedict Arnold, at the battle of Saratoga, was everywhere in the thickest of the fight, but he fell as George W. Cole did, and became a traitor to his country. Aaron Burr, and other instances like him, were cited. We have nothing to do with this question of antecedents.

Counsel here quoted from the address of Mr. Hadley, showing that the prisoner was acting under the law of nature. Where would George W. Cole stand under the law of nature? Under this law, neither wife, family nor children, could be recognized. Under the law of force, all are as the beasts of the forest. They propose to give the prisoner the law of the land, and to treat the deceased according to the law of nature.

All that refers to the prisoner's actions and motives at New York and on his way to Syracuse, is to be set aside. Counsel then referred to Mr. Hadley's quotations of the old Levitical law and denied that God thundered forth from Mount Sinai any such declaration about putting the adulterer to death. Brother Hadley had deliberately left out the declaration relative to putting the adulteress to death. The Levitical law required that the sin of adultery should be proved by two or three witnesses, and our Saviour repealed the laws permitting any man to become the avenger of his own wrongs. But even under the Levitical law, the guilt must be established before the Judges, and vengeance and recompense belongs to the Lord. But if it is desired to revive the old Levitical law, they should revive the whole law. This does not permit witches to live; it puts to death those who take the name of the Lord in vain; or the poor man who picks up stray fragments of wood on the Sabbath day. There is only one instance in the Levitical law in which a man can become the avenger, and that is where the next of kin has the right to pursue the murderer and to take his life. Deuteronomy was quoted by the counsel to show this, and that the murderer shall surely be put to death.

In the opening argument of counsel, the laws of the land are alleged to be defective, because the laws do not punish the adulterer with death. Can anything be more dangerous than this argument? The jury are thus called on to re-enact that the adulterer is to be put to death, and disregard the law

of the land by taking it into their own hands. If the laws are defective, they have been so from the time we severed our connection with the mother country, and should not be set aside in this unconstitutional manner. If a woman is pure, she needs no law for her protection; if she be of different character, you may pile law upon law—Pelion on Ossa—and it will be of no avail.

We have laws to punish seduction and rape. In this case, we have a woman over 40 years of age, who has all the restraints of children and husband and society—to save that woman it is proposed to have a law to punish her seducer with death, and to let the red-handed murderer go free. The pure matron of 35 years has a shield more efficacious than human laws. It is that purity of her heart which is the brightest jewel in her character. She can say as the Son of Man said to the tempter, “get thee behind me!” Woman needs no law to protect her purity. Acquit this man and then go home and tell your wife what you have done by disregarding the law, because it was not strong enough to protect the virtue of a woman of 35 or 40 years of age. There is not a true woman among them who wouldn't tell you that you had disgraced yourselves and them.

Counsel here read the story of Joseph and Potiphar's wife, as showing the danger of the passage of such a law as counsel for the defence claim should exist in this State. If Potiphar, believing his wife's story, had gone forth, after two days, and slain Joseph, counsel imagined Brother Hadley, if he had been practicing at the Egyptian bar, opening the case for Potiphar, Brother Parker closing on the adultery portion of the defence, and Brother Brady on the question of insanity; and then drew a parallel between the two cases.

Counsel then said the present case presents three questions :

1st. Was the defendant guilty of taking the life of the deceased with a premeditated design ?

2nd. Is there any justification or palliation or excuse for the act ?

3d. Was the defendant at the time insane, so as not to be responsible to the law ?

He claimed that there was no question of premeditated design ; and no clearer case had ever been disclosed in a court



of justice. Here the first impulse had time to subside, and therefore the prisoner acted from motive. On Monday, he purchases a pistol in Syracuse, and inquires if the cartridges are reliable. He is told they are, and only purchases five or ten. This very pistol is the one that did the deed. Besides, the pistol belonging to his daughter Alice, if used, would have given the intended victim a chance to return the fire. The other pistol was a Derringer, certain to kill, while the smaller pistol was found upon his person. Then he writes the communication marked C., and says to Mrs. Cuyler, "if you hear of any fuss take this paper and have it published; and if the paper has already been published, I want you to have it circulated in an extra." This statement was drawn from Mrs. Cuyler before the Grand Jury.

Counsel here defended the District-Attorney for his course before that body.

He described the prisoner on his way to Stanwix Hall as a walking battery, who came here with the deliberate intention of killing a man of high character like Mr. Hiscock. What did he mean when he said he meant to make Hiscock abase himself at the mouth of the pistol? The significant letter left with Mrs. Cuyler shows what he meant. The conversation with Mrs. Cuyler shows that he meant to see Hiscock. Cuyler swore he did before the Grand Jury, but forgot the fact here. He probably did mean to see Barto, but he meant to see Hiscock too. He doubtless intended also to go to Brooklyn with his wife, and live with her at Brooklyn; but at the same time he meant to execute his threat. Counsel ask why we don't call Barto. Because Barto is her brother. I claim that the relations between Cole and his wife have never been severed, and we don't believe it is good policy to go into the enemies' camp for troops. Why didn't defendant put his brother-in-law on the stand? Was it because Barto gave him the advice of a good citizen and a lawyer, and because the prisoner acted upon the impulse of a soldier?

Cuyler is conveniently absent at the time of the homicide. Prisoner came down Broadway and saw Hiscock standing in Stanwix Hall; entering the side door, he walks in the direction of Hiscock, with the pistol in his hand, with a firm step, and fires. Hiscock falls like a bullock, and his life blood oozes out. Counsel commented at length on this act,

as that of a base, cowardly assassin, a sneaking, cowardly act.

Counsel then proceeded to the second branch of the inquiry and read from the revised statutes, to show the cases of justifiable or excusable homicide, and of murder in the first and second degrees, and claimed that there was no such thing in this case as excusable or justifiable homicide.

The defence that the accused was justified in killing Hiscock because he was a seducer had been ruled out by the Court, and all that had been received on that subject was not so received as proving the fact, but as a part of the *res gesta*. The adultery has nothing to do with the case, and yet the counsel expect the jury to take the law into their own hands and then justify the act on the ground of insanity.

Counsel then referred to the second (sealed) paper in evidence, and explained that he had withdrawn his objection to its reception on the ground that in case of conviction and an appeal it might have been held that it was improperly excluded and a new trial would be the result. He explained at length the circumstances connected with this subject.

Mr. Tremain then contended that no man has the right to take the law in his own hands, except in the cases specified by the statute. If the prisoner had evidence of his wife's adultery, he should have rejoiced at the opportunity to sever himself from such a mass of putridity. He should have applied for a divorce, and not taken her to his embrace and then go forth to kill the alleged adulterer. He did not know but defendant intended to imitate Sickles, but the difference in the two cases was that in Sickles' case, the adultery was proved, and Sickles saw the adulterer signaling his wife. If this jury shall justify this prisoner in this murder, after two days' cooling time, the precedent would be quoted everywhere, and no man could foretell what would be the consequences to society.

What was the provocation? The prisoner was mad, but he doubtless ate and slept. Was the third paper in the hands of the prisoner before the homicide? Was it the result of a collusion between the prisoner and his wife, or was it prepared by other hands? Mr. Cuyler strangely forgot all about this paper before the Grand Jury, where he was asked to state everything that was said on Sunday, Monday and Tuesday

morning. He testified that he had told all that he knew, and if he now states the truth, he swore to an untruth then. There is a disposition on the part of Cuyler to remember more and more as time throws its mist around the transaction. Counsel claimed that the secret sealed paper was entirely inconsistent with the other two papers and with the declarations of the prisoner after the homicide.

Mr. Hadley don't know exactly when this paper was presented to him, while Cuyler swears that it was put in his hands on the 7th of June. It was easy for Mrs. Cole to have written this letter after the homicide and put it into the hands of Cuyler. It was necessary that Cuyler should have been a co-conspirator, but it is not necessary to claim that Mr. Hadley was. Why should she have confessed to him a fact which he himself knew before as well as she in regard to gratifying his desires? Did any woman on the face of the earth ever make such disgusting revelations of her own accord? These revelations are inconsistent also with the defence of melancholia, which the medical authorities say places the sexual instinct in abeyance. Counsel claimed that this paper was inconsistent with all the other facts of the case, and one which the prisoner has made nothing whatever of in getting before the jury.

Mr. Tremain maintained and requested the Court to charge as follows :

1. It is not necessary, to constitute the premeditated design to effect death, which is an essential element in the crime of murder in the first degree, that any particular space of time should elapse between the forming the design and the act of violence by which it is put in execution. It is enough that a deliberate intent to kill precedes the act, although that follows instantly.

2. The designed killing of another, if committed without provocation and not in sudden combat, is none the less murder because the perpetrator was in a state of passion at the time.

3. The intentional killing of the man who has committed adultery with the slayer's wife, from motives of anger or revenge, is murder, if such killing takes place so long after knowledge of such adultery, that the passions have had time to subside.

4. If the prisoner was sane when he perpetrated the homicide, it would be no justification or palliation of his crime, that he had been informed, on the Sunday preceding that the deceased had attempted to ravish his wife, or had committed adultery with her, on various occasions, even though such information was true, and knowledge of the fact, was then, for the first time, communicated to the prisoner.

5. In this case, there is no evidence whatever, which the jury have a right to consider, as evidence proving, or tending to prove, that the deceased had ever committed adultery with the prisoner's wife.

6. If the prisoner, when he killed the deceased, was in such a state of mind, as to know that the deed was unlawful and morally wrong, he was responsible.

7. To constitute a complete defence in a case where the insanity is partial, the insanity must be such, in degree, as to wholly deprive the accused of the guide of reason in regard to the act with which he is charged and of the knowledge that he is doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong, in the particular case in which crime is imputed to him, and to know that he is doing wrong, the act is criminal in law, and he is liable to punishment.

8. The degree of weight which shall be given to the opinions of medical witnesses upon the question of insanity, belongs to the jury to determine. If the medical witness predicates an opinion that the accused is insane, upon the hypothesis that the person may be insane, and yet that he may understand fully the nature and consequences of the act he is committing, and that such act is wrong, but that he, nevertheless, was unable to restrain himself from its perpetration, such opinions are not entitled to the same weight in the deliberations of the jury that they should have commanded, if they had been given with reference to the principle of responsibility recognized by law.

It will be recollected that my position was that the murder was premeditated by the prisoner, and that the facts supported that position. I will endeavor to show that the evidence sustains that position. A man is responsible for the rational or inevitable consequences of his own acts. The purchase of the pistol, his declarations to Cuyler, his written communication

to Mrs. Cuyler, his oral declaration to Mr. C. that accompanied that communication, his threats in pursuance of those declarations, his stopping at Albany, and not going directly to New York, his going directly to Stanwix Hall, his direct movements there, the coolness of his movements, the expression of his vengeance, his declaration "he's got it," while the deceased laid dead upon the floor, and the written statements of his wife put in evidence here,—all these support the position I have taken.

If this man was insane, it would be expected that he would show signs of remorse after the deed. Under the ruling he could have given evidence of his declarations after the homicide to show the state of his mind. But you have no such evidence of his insanity. Not a word of sorrow or contrition fell from his lips then. He has set here every day to attempt to prove the delusions under which he pretended to suffer when he committed the deed. And what says he through his counsel here? It is to justify the deed. He declares that the deceased had violated his honor, and that he (the prisoner) was justified in what he did.

I have shown to you that from the evidence the deceased was as pure a man as ever lived. I have shown that the communications made to the prisoner were no justification of this act, and that it was not such as to disturb his marital relations; that instead of his severing his relations with his wife, he had proceeded with her towards Brooklyn, and to get a boarding place there near to his place of business. I have proved that on the way in the cars they sat quietly together, upon the same seat, with the head of one upon the shoulders of the other, and such as rather to show her affections of the honeymoon. After this deed of murder, the first person he sent for was his wife, and she at once put herself in close communication with the counsel of the prisoner. With these facts, what becomes of the theories and fancies set up by the paid counsel of the prisoner?

I now proceed to the question of insanity. I shall endeavor to show you that the prisoner was not at all insane at the time of the homicide, or that if he was at all, it was not of that degree that excuses him for the consequences of his acts.

What is the theory set up by the defence? It is that when he fired the pistol he was seized with a sudden frenzy that

overwhelmed his reason, and put his will beyond his control.

It was asserted that his reason was overthrown when he met Hiscock at Stanwix Hall. And yet Mr. Hadley, in his opening address, stated that he went there in sound reason, for the purpose of making Hiscock abase himself before the prisoner. If he had this purpose, a purpose shadowed forth by his paper left at Syracuse, then how can it be said that when he met Hiscock he was seized with a sudden overpowering frenzy that made his will powerless.

Take a case. A man buys a pistol to take a man's life. He meets the man and takes his life in pursuance of his purpose. How in such a case can it be said that when the man committed the act thus deliberately, he was governed by an uncontrollable impulse? But the law steps in and declares that no words shall justify an assault and battery, and much less a murder. He shall be held responsible for the result of his passion.

The counsel referred to the proposition submitted to the Court by the prisoner's counsel, upon which a request was made to charge the jury.

It is claimed that the English law has been changed in this country in the case of McCann. I claim that that case has not changed the common law rule, and that the burden of proof of insanity is still upon the accused. The counsel said that there had been decisions since the case of McCann. In the case of Walter the Court held that sanity was the normal condition of men, and that it was not incumbent upon the prosecution to give affirmative evidence of its existence. That case has since been affirmed in the case of O'Brien. The counsel stated the facts of the case of McCann. It does not disturb the fundamental theory that you start with, the presumption of the sanity of the accused, and that it is incumbent on him to prove the contrary.

I do not intend to base my argument upon what every lawyer or doctor has written. I shall show you the law from the records of the Court. I could show you from the books of the doctors that many of them at least disagree with everything that has been laid down as the law by the courts of the land.

It seems to me that the first extraordinary circumstance in

this case must strike you as being the fact that the prisoner has never been treated as insane, though surrounded by medical and other personal friends. Upon this point I refer you to the writings of the famous and enlightened Dr. Beck. He lays it down as a most important consideration, "why shall it not be laid down that the first and earliest proof of insanity shall be the murder?" It has been asserted to you here that the boldness of the homicide is proof of insanity. Another extraordinary circumstance in this case is that the prisoner was suffered to go at large; that he was engaged in business; that a place under the government was sought for and obtained by these very friends who now assert his insanity. But at once, after the homicide, it is now asserted that he became sane. The prisoner is here to-day hale, hearty and vigorous, and fully capable of maintaining his defence.

Our law provides that if a man is acquitted upon the ground of insanity, the Court shall at once send him to a lunatic asylum, that no further harm shall be done by him. And yet in this case you are asked to set him at liberty, though his own witness, Dr. Hamilton, tells you that he has all the physical and hereditary causes of insanity still existing.

I shall seek to show you what a medical mania is, and that it is not such as shall prompt a man to shoot down a man against whom he entertains personal anger, and after preparing for two days for the perpetration of the deed.

The counsel referred to the rule of law in cases of insanity as laid down by Judge Peckham in the case of Willis. There cannot be insanity without delusion. That case was presented to the Court of Appeals. The Court approved of the rule as laid down by the Judge, and also affirmed that delusion was a necessary element of insanity, and that the party must be in such a state of mind as not to know the character of the act he was doing.

In the case of Freeman, the same doctrine was maintained: in cases of alleged insanity, it must appear that it was such that the party could not distinguish between right and wrong.

The counsel read from several English and American authorities upon the point.

In a late edition of Dr. Beck's Jurisprudence reference is made to some authorities in which it is laid down as a rule

that mere momentary impulse is no sort of an excuse for crime.

The counsel alluded to the case of Huntington, in which Mr. Brady appeared as counsel, and in which, too, as in this case, there was applause by the audience, but whether from sympathy for crime or as a tribute to the eloquence of the counsel, does not appear, though the prisoner was convicted. In that case the same doctrine was affirmed, and the Court suggested its grave doubt upon the subject of excusing a man for his acts on the ground of "moral insanity." [Mr. Brady suggested that he did not carry up that case, because there were twenty-seven indictments against the prisoner.] Mr. Tremain intimated that once a number of offences ought to be set up as good evidence of the man's insanity on that point. Mr. Brady said that he did not then have the advice of Mr. Tremain. Mr. Tremain replied that in that case there were any number of doctors to testify that Huntington was crazy, because he was so great a forger as to shake the commercial world to its centre.

Mr. Tremain continued, after this episode, his reference to the authorities. Among those he read the opinions of Lord Erskine, Lord High Chancellor of England, in which it is asserted the delusion must exist to constitute insanity, or such at least as shall excuse the commission of crime.

Homicidal mania is shown by these authorities to act without motive, and to be indiscriminate in its objects of attack.

The counsel said that he would proceed to discuss the facts of the case, and first as to the medical evidence. Where medical evidence is based upon theory, it is entitled to just such weight as mind shall give to it, and none other. I have respect for science, and I know that it was not alone in the days of Paul that much learning made men mad. When medical opinions are based upon principles not recognized by the law, they are not entitled to any weight. The result otherwise would be to place it in the hands of medical men to overturn the law as settled by Legislators and Judges.

I will just take the four experts through all of whose testimony it runs. Doctor Hammond says that there may be insanity without delusion. Doctor Sherry says that a knowledge of doing wrong is not necessary to a case of insanity. The testimony of all these four base their opinion upon prin-



ciples directly hostile to the settled rules of the law. Who is Doctor Hammond? A man who examined 15,000 cases in the lunatic asylums in the same manner that the boy went through college, by going in at one door and being kicked out of another; a man who was removed, upon a trial, from the office of Surgeon-General of the United States.

This Dr. Hammond is the leader of this party of experts. Was it proven by any one of these four men that they ever saw the prisoner when he was insane? Their opinions are wholly based upon a hypothesis. Our witnesses testified that the physical injuries would wholly account for the prisoner's conduct.

Dr. Manly said he saw a tendency to dementia. And yet during all this tendency the prisoner was attending to his duties. We have shown that there is no such thing as a tendency to dementia. Dementia is the tomb of reason.

Dr. Rice said he thought it was a case of melancholia, simply because that after a severe raid the prisoner wanted to get a sick leave to go home. And yet for a whole year before that he was on the most intimate terms with him, and had not seen any evidence of such a disease.

Dr. Palmer does not pretend that there was any insanity during the existence of the physical disease. Under his testimony, much of the severity of the physical injuries shrinks away.

Dr. Roberts thought it was a pure case of melancholia; and yet he thought that melancholia and kleptomania were about the same thing, and that the latter might be a nervous disease.

It is claimed by these physicians that the physical diseases that existed in this case are evidence of insanity, and that if those diseases did not exist the insanity would be more certain, because of an inability to find any cause for it. According to their evidence every man is insane, for every man has at periods of his life some or all of the diseases, mental and physical, that affected the prisoner. These witnesses have never personally seen any such cases, and there is no proof of the truth of their theories to be found in the books. Doctor Hamilton examined the prisoner in jail, and finds the existence of the physical diseases in a stronger degree than ever before, and yet the prisoner is now sane. Society cannot

exist if such testimony is to control in the administration of the law.

Why were medical witnesses sent for all over the country? Could not able medical testimony be procured in this city? We have met them by calling the leading men of the profession in this city.

We first called Dr. Pomfret, and I was sorry to hear one counsel say that "we have had enough of Dr. Pomfret," and another that "Dr. Pomfret had turned from saving souls to saving bodies." Dr. Pomfret is an educated physician. He early entered the service as the Surgeon of the 113th Regiment.

[The counsel was here affected by the recollection of the death of his son, attached to that regiment.]

Dr. Pomfret is now Surgeon-General of the State and one of the professors in the Albany Medical College. In these several capacities he has had large experience. Dr. Pomfret testified that there was no evidence of insanity, and that the physical diseases fully account for the conduct of the prisoner and its alleged change. The doctor described the characteristics of melancholia, none of which existed in the case of the prisoner.

Dr. Mosher, showed himself, in my judgment, to be one of the most clear-headed witnesses I ever saw. He says that the ganglionic system could not have been affected in this case, for that if it had there would have been other evidences of it. He says that disinclination and inaptitude for business is one of the best evidences of melancholia, none of which exist here.

Our next witness was John Swinburne. He is one of the most prominent medical men in the State; he had great experience in the army. He says that there is no evidence here of insanity; that there is no proof of an affection of the ganglionic system, and that no insanity can exist without a disease of the brain.

Dr. Hun was one of our witnesses. You have seen how great has been his experience, aside from his great reputation. He fully and strongly affirms the opinions given by the other witnesses. He stated that none of the physical injuries could affect the brain, and that they fully account for all his alleged peculiarity of conduct. He showed, in his quiet way, the evil effects of a confinement in jail upon a person afflicted with melancholia.

The counsel called attention briefly to the evidence that relates to the alleged change of the prisoner's character and disposition.

He claimed that the circumstances upon which this evidence was founded had been greatly magnified, but that if true to their fullest extent, they exhibited no evidence of melancholia. The current testimony of all the witnesses is that they never heard him utter a single irrational sentiment. His conduct, on all the occasions can be easily accounted for from rational and ordinary causes. According to the inferences of witnesses and the argument of the counsel, everything that the prisoner did or said, or omitted to do or say, was evidence of insanity. If he did a certain thing it was such evidence, or if he did the opposite it was the same.

We have introduced the testimony of several witnesses to rebut the inferences drawn from the conduct as shown by the defence. That testimony, we claim, proves that his deportment during all the time during and since the war, was that of a rational man.

I say that there is no proof of delusion; but the facts were real; that there is no proof of motive for mania, but proof of rational cause; that there was directness of aim and effort, the suddenness of reform from his alleged insane condition, his conduct after the homicide justifying it, and other facts showing his perfect sanity of mind. I think that a case of insanity might be made out against almost any man as well as has been made by these physicians.

Take the case of my learned friend, Judge Parker. He was once generous in his thoughts and purposes. Now he is suspicious. He has attacked the counsel for the prosecution. He has attacked the brother of the deceased because he has been here at this trial; and then he eulogizes the brothers of the prisoner for doing the same thing that Mr. Hiscock has. Then he attacked Dr. Pomfret. Then I would charge him with delusion. He has imagined he had proof in the case that they did not have. He has misunderstood the testimony. I would show that he has been forgetful. One day he has said that every man has said that the prisoner ought to be acquitted; and on the next day that all but licentious men thought so. Then I would say that Judge Parker is childish in taking a little applause in the court-room as proof of pub-

lic sentiment. Again, that he used once to treat courts with respect, but now he quotes alleged testimony that the Court has ruled out.

Put all these cases together, and I think we have a pretty good case of insanity against him, especially as he is a sound man and has none of those physical injuries that the prisoner had. Dr. Manly would think it a clear case of dementia. Dr. Rice would call it a clear case of melancholia.

But I must draw my remarks to a close. I have felt that I thought I had not discharged my duty unless I had done it thoroughly.

I must allude to a personal matter. One counsel has called it a case of thirst for blood. Another has alluded to the historical case of thirty pieces of silver. If I had looked for money, I would have now sat side by side with Mr. Hadley. I was well acquainted with the deceased, and had had intimate personal relations with him. But if my conduct here has shown that I have been influenced by any other than high professional considerations, I should regret it. We know the influences of sympathy that cluster about a prisoner, and how a deed, even like this, is forgotten after the grave has closed over the dead. But we are not conscious of having transcended our duties. We have all discharged our duties to the best of our ability.

The defence is one not entitled to your favor. Let it not be said that you have denounced to the children of the deceased their father as an outlaw. Meet this case like men. Do your duty fearlessly. The jury represents the people of the State, and it is for you to represent the dignity of their laws. Whether the prisoner be hung or not if he be convicted is not a matter for the jury. Let the law be vindicated, and then you have discharged your duty. I do not undertake to say that the Executive will interpose to save his life, but I believe he will deal justly and mercifully with the prisoner if he thinks his previous character shall call for it. And now may the Almighty Power that controls the destinies of men lead you to your duty as your consciences shall dictate.

Mr. Brady arose and said it was the first time he had ever heard the prosecution suggest the idea of a verdict with recommendation to mercy, and that the prisoner did not wish for it. He desired a positive verdict one way or the other.

Mr. Parker called attention to some misstatements of the evidence that he claimed Mr. Tremain had made, and asked the Judge to charge that the question of insanity is a question of fact for the jury and not a question of law.

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#### THE JUDGE'S CHARGE TO THE JURY.

Judge Ingraham charged the jury. It is frequently the province of juries to have to pass upon cases of unpleasantness. The prisoner, from his character, is placed under circumstances different from most cases. The character of the facts, too, make it a peculiar case. The jury must decide from the evidence. They have no right to take into consideration the past condition or character of the prisoner. They must try all men, rich and poor, high and low, alike.

I do not propose to discuss the evidence. That has been done very fully by the counsel on both sides. I intend to address you upon the subject of the law, and to leave you to apply that law to the facts of the case. You have nothing to do with sympathy for either side in this case.

The prisoner is charged with murder in the first degree. The offence was committed on the 4th of June last, in Stanwix Hall, in this city. He left his home at Syracuse with his wife, armed with two pistols, and went directly to Stanwix Hall. It is said that his object was to look at the Register, but instead of doing that, he went directly to the deceased, fired his pistol and shot him dead. Nothing was said before the shot was fired, and no intimation given to the deceased of the prisoner's presence. At once, upon the firing, prisoner said the deceased had raped his wife.

There are two defences set up by the defence. They are of such a character that they are hardly reconcilable. One is that he had a right to kill, and the other that he was insane and did not know what he was doing. I know that there is among some a disposition to find the excuse for every crime in insanity; that is not your duty.

There is no evidence in this case of any adultery—none whatever. Whatever has been admitted on that subject has

been simply to prove the state of mind of the prisoner. His wife has not been a witness, and the law would not permit her to be. You have no right to adopt the consideration that there has been any adultery.

Murder is the killing of a human being with premeditation, except under circumstances of justification or excuse, as laid down in the law.

The Judge recited the cases of such as were laid down in the law, and said that it would be seen that this case did not come within any of the definitions as thus laid down.

The circumstances from which you must judge this was murder, laying out of mind the question of insanity, are the facts before and connected with the transaction. The prisoner had heard of improper intimacy between his wife and the deceased. He was very angry over it. He heard of it in New York, and then returned to Syracuse. He then inquired about it. The conversation with Mrs. Cuyler was not calculated to lessen his temper. On the next day he bought pistols and cartridges.

He left Syracuse on the 4th to come to Albany, avowing his purpose to see Barto, and also to see the accused, as he told Mrs. Cuyler. He gave a paper to Mrs. Cuyler to explain what might happen. That paper was to be published if she heard of any difficulty. In that paper he states his intention to have Hiscock abase himself and beg his miserable life, and to have him make ample apology for his conduct. On arriving at Albany he left directions as to what should be done by his wife and Cuyler. He went to Stanwix Hall and there committed the act of homicide. It is for you to say whether you see in this an act of premeditation.

It is not always possible to learn the question of premeditation by direct testimony. If you are satisfied that he entered the hotel to take life, then he is guilty of murder, unless there is something else in the case to relieve him from the charge. I shall have to say to you that no outrage or motive, however great, will justify any man to take the law in his own hand, if he had time for reflection. It is true that if a man finds a man in the act of adultery, it is not murder if he kills him. The reason is that the law does not presume that he has had time for meditation and coolness, and that he is to be excused to a certain extent for his act. You may determine whether

or no the party had time to cool. That is the same question as to whether he had time for meditation.

The remaining question is that of insanity. It is the law that an insane man is not responsible for his acts. I mean by insanity such a state of mind as that the party does not know what he is doing; does not know the difference between right and wrong, and does not know the consequences of his acts. I shall not undertake to refer to the evidence upon this subject. It is contradictory. I have not been able myself to acquire any clear judgment from it. It is your duty to undertake to do it.

There is a very great contradiction in the testimony. But none of the witnesses say that a tendency to the disease is the disease. None of the witnesses testify to his tendency to the disease before he went into the war. The question is whether he was insane at the time he committed the act. You have his conduct during all the time, the injuries inflicted upon him and his disposition under them. You have the proof of his condition since the war. None of the witnesses have stated acts of insanity. Then you have the acts preparatory to the commission of the homicide, as I have stated to you.

You have his conduct on the way to Albany; you must take all these facts together in considering the question of the condition of his mind, and from them to judge of his sanity or insanity.

There is one great fact that, from the commission of the homicide till now, no witness has been called to prove his insanity. The only witness testifies that he is now sane.

You must be satisfied that he was so unsound of mind as not to be responsible for his acts. The law looks upon insanity in one way and the medical profession in another. The doctors regard anything as insanity that disorders the mind. The law does not so regard it, but holds the man accountable if he knows right from wrong.

When the mind is so destroyed as to overcome the will, and deprives him of not knowing what he is doing, then he is not responsible.

The questions are: First, Was the act that of the prisoner? Second, was it an act of premeditation, that happened at any time before the homicide, and whether the act was committed under the influence of insanity, so that he did not know what

he was doing? If you have a substantial doubt upon one of these points, the prisoner must have the benefit of that doubt.

My duty is done. Yours now commences. You must discharge it conscientiously.

At one o'clock the jury were called into Court, and the following proceedings took place:

The Court said (addressing the jury)—Not having heard from you, I suppose you have not agreed upon a verdict.

Foreman—Not yet, your Honor.

The Court—I have sent for you to know if there is anything in regard to which I can give you information.

The Foreman—I would like to state to your Honor that we have considered two points, that is—"guilty, or not guilty," as we at present understand.

The Court—I do not desire to know how you stand.

The Foreman—If there is anything in addition to what we have heard, that is necessary to us, we should be glad to receive it.

The Court—I understand that; I will give you the benefit of that. I did not say to you, gentlemen, in my charge, that if you found the prisoner to be sane, but, that he did not do this act with premeditation, but did it from sudden impulse and in the heat of passion, that you might have found him guilty of a less offence—that is, manslaughter in the third degree.

I should, perhaps, have said then, and upon reflection, I think it is right I should say to you now, that the crime of killing without a premeditated design, with a dangerous weapon, in the heat of passion, is called manslaughter in the third degree—a lesser offence than murder. The law says you may convict of a lesser offence where the party is indicted for a higher offence in the same grade.

I think it is important that you should agree upon this matter, if you can, among yourselves; for we have occupied a long time in trying it. At the same time, I do not suggest nor urge upon any juror that he should give up or yield his conscientious convictions or judgment. I think you should abide by your conscientious convictions and judgment. What I mean to say is that if you believe the prisoner to have been sane at the time of committing the act, but that he did not do it with pre-



meditation—that it was done in the heat of passion and without design previously, with a dangerous weapon, the law defines that to be manslaughter in the third degree; and under this indictment for murder, you can find him guilty of that.

Mr. Parker—I wish to except to this, for this was not suggested at all in the case.

Mr. Brady—This was never put in at all as a defence, and I protest.

The Court—I understand that perfectly, and I wish to say to the jury that they can find in that way. You have the benefit of the exception.

Mr. Parker—It is entirely wrong, and I desire the Court to charge that upon the facts proved, there can be no verdict as a matter of law, except “guilty, or “not guilty.”

The Court—You can have the benefit of any exception upon that point. You can have an exception to the whole.

Mr. Parker—I ask the Court to charge that the defence of insanity would be applicable to every degree of the crime.

The Court—I have told them that.

Mr. Parker—We do not wish to be compromised in this—

The Court—I do not wish to compromise you at all.

Mr. Parker—We have not tried the case at all on this defence.

Mr. Brady—If the case had been tried with this as a defence, or this had been so understood, we would have had this up, and prepared argument in regard to this point; it was not defended or argued in this way at all.

The Court—You have been tried for the higher crime, and that may include the lesser.

Mr. Mitchell—The same rule about doubt, or reasonable doubt, applies to manslaughter as to murder, and I would like the jury to be instructed on that point.

The Court—Yes, yes! The only point is if you (the jury) have any doubt about premeditation, you can fall back on the lesser offence.

The Court continued open all day, no recess having been taken. At 6 o'clock, p. m. Judge Ingraham and counsel appeared in Court, and learning that the jury had not then agreed, the judge stated that he would be present again at 8½ o'clock next morning; but that if they agreed before 11 p. m., the Court would return and take the verdict.

The jury returned and stated that they could not agree, and were discharged by the Court.

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## SECOND TRIAL OF GEN. GEO. W. COLE,

*For the Murder of L. Harris Hiscock.*

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ALBANY (N. Y.) COUNTY, OYER AND TERMINER.—NOV. 12TH, 1868.  
—BEFORE JUSTICE HENRY HOGEBROOM, AND ASSOCIATE JUSTICES  
SMITH AND TUTTLE.

The same counsel appeared for the People, as on the first trial. The counsel for the defence were also the same as on the first trial, although different duties were assigned to them in some instances.

The testimony of the witnesses who testified at the first trial, and who were recalled on the second, has been omitted. The court room was quite crowded with summoned jurors, witnesses, members of the Bar and spectators. Senator Cole, of California, the brother of the accused, was present, as were other friends. The counsel on the part of the People were District Attorney Smith and Lyman Tremain, and in behalf of the prisoner, William J. Hadley, Amasa J. Parker and William A. Beach. James T. Brady of New York, had not arrived, and the counsel of the prisoner asked for a postponement till the next day, to enable Mr. Brady to be present, but the Court declined to grant the postponement.

During the examination of some of the jurors, arguments were had by several counsel upon the rule of law applicable to such cases. The fifteenth juror called was Alexander Mackey of Rensselaerville. As to him, the Court overruled the challenge for principal cause, and he was then challenged to the favor by the prisoner. S. W. Rosendale and Stephen Paddock were appointed triers. The juror stated that he had

read the accounts of the former trial, and had from them acquired an impression, and that he had casually discussed the matter with others. But he only had an impression upon the subject, and such a one that he thought might readily be removed by evidence. The question of the juror's competency was discussed by Messrs. Tremain and Beach, respectively. The Judge charged that it was the purpose of the law to constitute jurors wholly of men free from bias, prejudice or opinions. But in the progress of popular intelligence, and especially because of the dissemination of newspapers, if every person was to be excluded from juries because of his having heard or read of cases, and thereby acquired a slight impression of them, intelligent men would be excluded, and the jury box would be wholly filled up with ignorance. It was for that reason that the severe rule that had once prevailed had been somewhat relaxed.

The triers found the juror to be competent. He was thereupon challenged peremptorily by the prisoner.

Messrs. C. B. Sedgwick and David Mitchell, who were counsel on the former trial respectively for the prosecution and the prisoner, appeared now as counsel in the case.

Upon the opening of the Court, District-Attorney Smith announced that he desired to challenge Richard D. Betts, of Albany, the fifth juror empannelled and sworn in the case. This juror had been accepted without any questions being asked him as to whether he had entertained or avowed any opinions in the case. The District-Attorney stated that he had received reliable information that this juror had not only freely avowed an opinion in the case, but had been in the habit of frequently visiting the prisoner in jail, and had taken members of his family to visit him there. Upon this statement, Mr. Smith claimed the right to open the challenge and examine the question of the juror's competency.

Mr. Parker, of counsel for the prisoner, in answer, claimed that no such practice had been known in the Courts, and that after a juror had been duly empannelled and sworn there was no power to displace him.

Mr. Smith, in support of his motion, claimed that the law was well settled upon the point. He cited authorities, one reported in 13th Wendell, the case of the People v. Damon, and the other the case of the People v. Wilson, reported in

Parker's Criminal Reports. In both these cases the Court held that at any time before evidence had been taken in a case a challenge to a juror could be renewed, and if the juror was shown to be incompetent or unfit he could be set aside. In both these cases the objection to the juror was that he entertained conscientious scruples against convicting a party of a crime for which the punishment was death. The Court had allowed the fact to be proven, and the juror was displaced.

Mr. Beach, in answer to the District-Attorney, stated that he had heretofore supposed, contrary to the position advanced by his associate, Judge Parker, that there were cases in which it was within the province of the Court to re-open a challenge of a juror after a juror had been sworn. But he, Mr. Beach, claimed that it was a matter within the discretion of the Court, and a right only to be exercised in cases of the absolute legal disqualification of the juror. Did any other practice prevail, and were challenges allowed to be renewed from time to time, a jury might never be obtained. He claimed that the cause alleged by the District-Attorney was not one of absolute disqualification. He also claimed that the practice under the common law was not in any case to permit it unless where some new reason for a challenge had developed itself.

The counsel also referred to some remarks made by Mr. Smith as to the conduct of the counsel for the prisoner during the trial, and declared his readiness to disclose some of the motives that had actuated the prosecution, if he was challenged to do so.

Mr. Parker asserted that the case now in question did not come within the doctrine laid down in the authorities to which Mr. Smith had referred.

Mr. Smith offered to his adversaries the privilege of proving anything he had said or done in the case at which they had taken offence.

Mr. Beach asserted that Mr. Smith had stated to one Brown and one Van Alstyne that he would hang the prisoner if he could.

Mr. Smith.—The assertion is utterly unfounded and the allegation false. I have never said so to Brown, Van Alstyne or to any one else. I believe the prisoner to be guilty of willful murder, and shall try this case upon that belief.

Mr. Beach.—Mr. Smith has just at this moment stated his belief.

Mr. Smith.—You hunt up your Mr. Brown or Mr. Van Alstyne.

Mr. Beach.—I'll hunt you pretty close.

Judge Hogeboom decided that jurors are not entirely beyond the reach of the Court where good cause is shown for their rejection. He referred to several cases in which it would be clearly proper for such interference, such as the sudden illness of a juror, proof of his religious scruples, his being over the legal age, or without the requisite property qualification. If in such cases a juror may be removed, then may he be for other reasons. It would be a mockery of justice to try a case where a portion of the jury had made up its judgment and was beyond the reach of proof or argument. An admission to the panel of jurors is qualified and not absolute. In this case he would allow the challenge to be renewed, if the prosecution showed any good reason why it had not been made before.

In regard to the personal and professional dispute between the counsel, the Judge stated that the prosecuting officer, in entering upon and opening a case, had a right to indulge and give expression to his belief as to the guilt of the party on trial. It was equally his right to make avowal of such belief, as it was for the counsel for the prisoner to state his belief of the innocence of his client. The Judge then called upon the District-Attorney to show why the motion was now made.

The District-Attorney then, upon being sworn, testified to the grounds upon which he expected to prove the disqualification of the juror.

The Judge decided that the excuse rendered by the District-Attorney was sufficient to allow the challenge for principal cause.

The juror was then challenged for favor, and two jurors were sworn as triers.

Mr. Betts was then sworn. (The juror here stated to the Court that he was over sixty years of age.)

Mr. Beach said this was not ground of challenge, but was only an excuse for the juror.

The Court ruled it was a ground for his discharge. Excepted to by the counsel for the defence. The juror was then discharged.

When the jury was obtained District-Attorney Smith opened the case for the people, reciting the facts of the homicide at Stanwix Hall, and quoting the law applicable to the case. He characterized the killing of L. Harris Hiscox by the prisoner as an act of cool deliberation and preparation, under circumstances of extreme cruelty and cowardice, constituting the crime of willful murder, for which the jury, under their oaths, discarding all personal considerations as to the military career or character of the accused, and having in view only the law, the facts, and the welfare of society, had no other alternative than to render a verdict of conviction.

At the conclusion of the District-Attorney's remarks, the first witness called was Judge Cornelius L. Allen, of Washington county, who testified that he entered Stanwix Hall just before the homicide, and was examining the Hotel register, when he heard the report of a pistol. Turning around he saw Mr. Hiscox lying upon the floor, and the prisoner standing some ten or twelve feet off. He heard the prisoner say, "I thought that man was my best friend," or "one of my best friends,"—"but he raped my wife while I was absent in the army."

Counsel for the defence objected to the witness stating the declaration of the prisoner, but the Court overruled the objection, and the defence excepted.

The witness was cross-examined by Mr. Parker, for the defence.

James T. Brady appeared as an associate counsel for the prisoner.

The following witnesses were then examined on the part of the People, viz.: Egbert Whittaker, John H. Mann, George W. Atkins, Dr. James H. Armsby and Ezra C. Treadwell. These witnesses are the same that were sworn on a previous trial. They detailed the circumstances of the homicide, the declarations made by the prisoner at the time, the weapons, letters, papers, &c., found upon him, and the character of the wound of the deceased. The People hereupon announced that their case was closed.

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## THE DEFENCE.

Mr. Brady, of counsel for the prisoner, asked that the Court direct the People to introduce as their witness the policeman, James Carlisle, who conversed with the prisoner, after his arrest, at the station-house, and for the avowed purpose of proving the declarations of the prisoner at that time. He claimed that such was the practice in the English courts, and cited authorities in support of his position.

Mr. Tremain, in reply, said that the English rule of practice was based upon a statute which required the statement upon the indictment of the names of all the witnesses sworn before the Grand Jury, but as no such statute existed in this State there could be no such rule.

The counsel for the People declined to introduce the witness Carlisle, and so the matter ended.

Mr. Hadley then opened the case on the part of the prisoner.

At its conclusion, the defence called *Dr. Marcus M. Manly*, who was Surgeon of the 2d U. S. (Colored) Cavalry during the war. This was the regiment commanded by Gen. Cole.

Dr. Manly testified to the nature of the injuries inflicted upon the prisoner's bowels, occasioned by the falling of a horse upon him, while in the service. He described the symptoms and effects upon the mind of Gen. Cole, and cited acts which the witness regarded as so singular as to lead him to the conclusion that Gen. Cole's mind had been disturbed, and that there was a tendency to dementia. The knife found on the prisoner was identified by witness as belonging to a case of surgical instruments.

The witness was cross-examined at great length by Mr. Tremain, as to his professional antecedents and his knowledge of the causes and character of melancholia and dementia.

It was agreed by the respective counsel that the testimony of several witnesses, as taken upon the previous trial, should be read as evidence, without taking the oral examination of the witnesses, except as to any points on which counsel desired to make farther inquiry.

The following witnesses were then orally examined. They were witnesses upon the former trial. These were James Carlisle, a policeman; Godfrey Weitzel, who as General, commanded a Corps to which the prisoner was attached; and

Lodewich Wooden, a member of the company under the prisoner's command. Carlisle testified to declarations made by the prisoner on the night of the arrest as to his wife's statement to him of the violence done to her by Hiscock. The witnesses Weitzel and Woodin proved the injury to the prisoner by the falling of a horse upon him, and the effect of that injury upon his physical and mental condition.

The only point that led to a discussion between the counsel was as to the admissibility of evidence to prove the statements made by the prisoner as to the effects of the injury received by him to persons other than medical men. The Court admitted such statements.

The reading of the testimony of Frank B. Garrett was completed and it was sworn to by Mr. Garrett.

*Bernard Kavanagh* was the next witness. He was the jailor of the Albany jail during the prisoner's confinement there, up to the first of January last. Witness testified to Cole's declaration to him relative to the circumstances that first induced him to suspect that there was something wrong between Hiscock and prisoner's wife. Cole stated to witness that his first suspicion, when accosted by Hiscock in the street, at Syracuse, and inquired of by the latter when he (Cole) was going to New York, was that there was something wrong in regard to some property. He also said he first supposed the coolness on the part of his wife had its origin in this question of property.

On the cross-examination, witness testified that Mrs. Cole was in the habit of visiting the prisoner at the jail for some six weeks immediately subsequent to the homicide. She called generally at 9 A. M. and remained till 11½ or a quarter to 12, returning frequently in the afternoon. Had seen her bring books and papers. The first seven or eight days witness remained in the room during the interviews between the prisoner and his wife, but after that he locked them in the room together, and left them alone. On one occasion witness saw the prisoner sitting on his bed. Never saw Mrs. Cole on the bed, nor either Mr. or Mrs. Cole undressed, in whole or in part, except that her bonnet and shawl were off. Prisoner wore a wrapper, and a pair of slippers.

The question in regard to the prisoner being undressed in



the company of his wife was objected to by counsel for defence; but the objection was afterwards withdrawn.

*Dr. Lewis Post*, testified to cases of insanity in the family of the prisoner.

*John Townsend*, was called as a witness by the defence, and orally examined. He was not a witness upon the former trial. He resides in Ovid, Seneca county. He testified that he is an uncle of the prisoner. The grandmother of the prisoner was of unsound mind for a period of ten or fifteen years. Her mental infirmity was aggravated by the loss of property through the failure of a bank, and she remained in that condition till her death. The witness also testified that a sister of the prisoner was subject to fits of melancholy.

A discussion arose between the respective counsel as to the admissibility of evidence showing that at the bazaar in Syracuse, some three months before the homicide, there was a marked intimacy between Hiscock and Mrs. Cole, and that the prisoner was present and saw the evidence of it. The question was discussed at length by Messrs. Tremain and Beach.

The Court ruled out the evidence, but in doing so stated that it would reserve its decision as to kindred matters of proof when it was offered. The Judge in deciding the point said, that if it was shown that the prisoner acted under the influence of an ungovernable frenzy at the moment of the homicide, he should not be held responsible, but if otherwise, he should be adjudged guilty.

The testimony of Mr. Fink, banker, of Syracuse, was read in evidence.

The inquisition, taken by Coroner Gillespie, was submitted and received as evidence.

*James H. Carroll*, foreman of the coroner's jury, was called for the purpose of proving that among other effects found upon the remains of Mr. Hiscock, were a photograph of Mrs. Cole, a silver tobacco box, presented to the deceased by Mrs. Cole, and also numerous letters written to him by different females. This testimony was objected to by the prosecution, who urged that it was an attempt to produce, by piecemeal, evidence of adultery, the attempt to prove which directly has been excluded by the court.

Judge Hogeboom decided not to admit the offer to prove by

James H. Carroll, the finding of the photograph of Mrs. Cole, the silver tobacco box, and the letters alleged to have been found on the body of Mr. Hiscock. The Court referred to a statement made by Mr. Brady, in connection with this offer, that the deceased, at the time of the homicide, wore upon his bosom a shirt stud that had been presented by General Cole to his wife. The Court remarked in regard to this, that it would not rule upon the admissibility of evidence to that effect at present; but intimated that in case it could be shown that the prisoner saw such a stud upon the bosom of the deceased at the time of the homicide, and recognized it as the one presented by the prisoner to his wife, it might be admitted as evidence. The Court added, that from the testimony adduced as to the prisoner approaching the deceased from behind, it did not appear probable that he could have seen or recognized what the deceased wore upon his bosom.

Mr. Carroll then testified that he was at the jail when General Cole was first incarcerated, and that he was laboring under a great state of excitement.

*William H. Burrows*, who was summoned on the former trial, but was too ill to appear, was sworn for the defence and testified that he had been engaged with the prisoner as a detective in the United States Revenue service, in the spring of 1867, and that in consequence of the dangerous character of the occupation, he (witness) had advised prisoner to arm himself. Witness showed Gen. Cole his own pistol, but the latter thought it was not effective, except at close quarters. No evidence was offered that General Cole had purchased a pistol at that time.

Upon his cross-examination, witness testified that he did not, at any time, notice any evidence of insanity in Gen. Cole. On the re-direct examination, witness testified that he noticed that the prisoner appeared gloomy and reserved, and that it was difficult to draw him into conversation.

*George E. Wilkins*, of Syracuse, and *Dr. Walter Kempster*, of the Utica Lunatic Asylum, new witnesses on the part of the defence, were orally examined. They testified to the change in the appearance, conduct and conversation of the prisoner during and since the war.

The counsel sought to prove by the latter witness the causes and characteristics of insanity, but the Court excluded it

for the reason that a sufficient number of witnesses had been examined upon that point. Mr. Brady then offered to prove, in opposition to the position set up by the prosecution, that melancholics had at times a tendency to commit homicide, but the Court excluded it. Notwithstanding the ruling of the Court, a question was asked the witness by the prosecution which opened the subject of insanity; and, on his re-direct examination, the witness testified to the several cases of melancholia with homicidal intent, and also to cases of melancholia occurring suddenly and as suddenly recovering.

The witness described cases occurring under his own observation at Utica. Three cases, of women brought to the asylum under the influence of melancholia, were referred to. One dashed her infant's brains out; another drowned her infant, and a third dashed her infant, with violence, upon the ground. Another cut her own arm off. A man, suffering under the same form of insanity, voluntarily requested that he might be confined in the asylum on the ground that he had an irresistible desire to kill his own grandchildren. He was so confined until his recovery from the disease.

The witness expressed the opinion that change of character was the leading feature by which to determine the question of insanity, and intimated a belief that this change in the prisoner was the effect of melancholia.

*Moses Sommers*, one of the proprietors and editors of the *Syracuse Standard*, was called and examined orally as a witness on the part of the defence. The witness was present at Stanwix Hall at the time of the homicide, and in the company of Hiscock. He detailed the circumstances that then occurred substantially as did the other witnesses. Soon after the homicide, the prisoner said to him Hiscock had dishonored his poor, innocent, simple wife, while he was absent in the army; had taken advantage of her during her illness; and that he, the prisoner, had proof of it; that she had sent for Hiscock to make her will; that she was ill in bed; that he had raised her up, caressed her, and attempted to ravish her. The prisoner at the station house wrote a note to his wife, which the witness delivered to her.

The counsel for the People sought to prove the contents of the note, but objection was made that it should be produced. The Judge reserved the question as to whether he would per-

mit oral proof of it. In reply to a remark made by the witness about the calamity of the case, and its unfortunate results upon the two families, the prisoner replied that he felt it, and that he expected to die for it. At one time the prisoner stated to witness that Hiscock had persecuted his wife for three years, but had not accomplished his purpose.

Argument was had by respective counsel as to the admissibility of witness' opinion of the rationality or irrationality of the several acts and declarations of the prisoner after the homicide, because of his not being a professional witness. The Court allowed the proof, and the witness stated his judgment to be that they were rational.

Coroner Gillespie identified the evidence taken on the inquest before the Coroner's jury.

*Mary E. Cuyler*, a cousin of the prisoner, who formerly lived with his family, and a witness on the previous trial, was called to the stand and sworn. Her testimony did not vary materially from her former statement, though it contained some points not brought out. She described the circumstances connected with the discovery of the intimacy between Mr. Hiscock and Mrs. Cole, and the terrible excitement exhibited by Gen. Cole in consequence, on the day before the homicide. He upbraided the witness for not telling him of it before, or reasoning with Mrs. Cole, and for keeping silent until he was a ruined and disgraced man. Witness replied that she guessed it was not so bad as that; but Gen. Cole said, "Don't tell me; I know it all; Mary has confessed." Witness did not see either the prisoner or his wife eat anything on Sunday or Monday before the homicide. Prisoner wept every time she saw him. He said he was going to New York, and would take his wife to Brooklyn, to prevent her seeing Hiscock. Witness put clothing enough in Mrs. Cole's trunk to last her three months. Saw Gen. Cole on Tuesday morning. He was still greatly excited and wept. He said he would stop in Albany to see Mr. Barto, Mrs. Cole's half-brother. He showed witness a ring that he said Hiscock had given his wife, and that she wore it next to her wedding-ring. He also said she had given him match boxes and shirt studs as love tokens. Mrs. Cole heard it all; she was crying and made no reply.

Counsel for the defence here exhibited a diagram of the As-

sembly Chamber, and proposed to identify it as the one sent by Mr. Hiscock to Mrs. Cole. Objected to.

The Court said it would decide as to the admissibility of the evidence when such evidence should be presented.

Witness then testified that on Monday before the homicide Gen. Cole came home and said that he had been followed by a strange man whom he suspected Mr. Hiscock had hired to assassinate him.

Counsel here produced a photograph of a residence, and asked witness to identify it. Objected to.

Mr. Hadley said the defence proposed to show to the satisfaction of the jury that adulterous intercourse was maintained between Mr. Hiscock and Mrs. Cole in 1864 and continued from that time until his death.

Mr. Brady argued at length the admissibility of the testimony, claiming that the defence would prove, beyond a doubt, by a number of witnesses, that Mrs. Cole was seduced by the intimate friend of her husband, in her bedroom during her sickness; that he continued the adulterous intercourse with her, taking no particular pains to conceal it, and riding with her in coaches through the streets of Syracuse until it became a public scandal.

The Court held that evidence of the adultery was inadmissible.

Mr. Brady argued that the presence of the studs upon the adulterous bosom, the wearing of the ring, &c., was equivalent to a discovery of the adulterer *in flagrante delictu*. He claimed that the adultery was continuous and that the prisoner was justified in the homicide.

Mr. Beach said he wished to prove the adultery by others, in order to substantiate Mrs. Cole's confession to her husband.

The Court said they would allow proof of what Mrs. Cole said, and that Cole said he knew it all.

After further argument, the Court ruled that the offer to prove adultery was inadmissible, and defence excepted.

The examination being renewed, witness said the General told her the confession was not fit to tell her, but that his wife had been more sinned against than sinning.

On her cross-examination, witness said Mrs. Cole one day left her rings on a table and witness found them; asked Mrs. Cole where she got the ring marked "W. & H."; she said

she bought it; witness replied, "I did not know you traded with Willard & Hawley;" Mrs. Cole colored up and turned away.

Witness then identified the paper which prisoner gave her the day he left Syracuse, directing her to have it published in case she heard of "a fuss." Witness was asked if she had testified to anything about the match-box, stud and ring on her previous examinations, and replied that she had not, and had not conversed with any one about them since.

On the re-direct examination witness testified that she had not so testified, because she was not asked about them, and that she had forgotten about them until after she left the witness stand on the previous trial.

*James Gillespie*, Coroner at the time, proved that he found four shirt-studs upon the bosom of the shirt of Hiscock.

*Montgomery Pelton*, sworn—Reside in Syracuse. In May of the year 1867, witness received the following letter from the prisoner:

*Private.*

SWEENEY'S HOTEL, May 30.

Dear Sir: I pledge you my honor that whatever your answer may be to this letter, no one shall ever know but myself, or even that I ever wrote you or you me.

There has been some rumor in Syracuse of a suspicious nature in regard to Mary, and a certain limb of the law. Now, I have less confidence in Mrs. C.'s discretion than in her integrity. She has no discretion and but little care for people's opinion, you probably know.

If there is any foundation for such rumor, I want to know it, that I may quietly drop some hint and stop it without publicity or disgrace.

If there be no cause, I don't want to hurt any one's feelings.

You must know more about this than any one else, so please write to me *at once* just how it is or *war*, fully, fairly, unsparingly, that I may quietly and quickly put an end to it by a broad hint to my wife. You will thus do her a kindness as well as myself, and perhaps save a scene unpleasant and disgraceful. Write me the facts fully and frankly. Direct to me at Sweeney's Hotel, Chatham street, New York.

A few days since while in Syracuse I was somewhat *astonished*, and will tell you why when we meet.

Yours, &c.,      GEO. W. COLE.

The witness stated that he answered the letter the same day he received it.

Mr. Tremain asked the prisoner's counsel if they intended to prove the contents of that reply. Mr. Hadley replied in the affirmative. It was thereupon objected that it could not be done unless it was shown to be lost. The Court stated that it would permit the prisoner to be examined upon the subject of the loss of the letter. The prisoner's counsel stated that they had not yet decided whether they would take that course.

*William J. Hadley*, counsel of the prisoner, was then examined. His testimony taken on the former trial, was read.

The witness further stated that he had heard the prisoner tell his wife in jail that their relations must cease, and that she must discontinue her visits to the jail. He could not say that he had seen Mrs. Cole at the jail more than twice. The prisoner's manner towards her was very kind. She remained here about a week, and then returned after Senator Cole arrived, but how long she then remained the witness does not recollect.

The prisoner's counsel proposed to read the letter from Mrs. Cole to the prisoner, read upon the former trial, which is designated as her "second confession," and which was kept by Mr. Hadley in his safe till produced at a meeting of the counsel.

Mr. Tremain objected to the reading of the letter upon the ground that there was no proof of its ever having been seen by the prisoner. It had been read at the former trial by consent, which the counsel decline to give now. The counsel claims that this paper was the production of collusion, and never seen by the prisoner.

Judge Hogeboom decided to admit the reading of the letter.

The testimony of John M. Bailey, Assistant District-Attorney, as to Mrs. Cuyler's testimony before the Grand Jury, was read, also that of Henry Smith, District-Attorney, relative to the testimony of both Mr. and Mrs. Cuyler before the Grand Jury. The object of this evidence was to show that the testimony of both of these witnesses before the Grand Jury and upon the trial of the case differed in essential particulars.

The law for production then read in evidence the paper for production by the prisoner in the hands of Mrs. Cuyler

on the Tuesday preceding the homicide, as testified to by Mrs. Cuyler, and printed in the first trial.

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*John Maher* and *Bernard V. Winne*, employees at Stanwix Hall, were examined by Mr. Smith—They proved that Hiscock had arrived at the hotel on the morning of the day before the homicide. This testimony was given to rebut the assumption made by Mr. Hadley in his opening, that the prisoner had an opportunity to have slain Hiscock at Syracuse on the day before, had the killing not been the result of a sudden impulse.

*Wilis H. Barnum*, of Syracuse, was sworn and orally examined—He testified that he had known the prisoner from 1850, and that he had not discovered any difference in his manner or conduct before or after the war.

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*Mrs. Luwinda Pelton*, of Syracuse, a half sister of Mrs. Cole, was sworn—Witness saw General Cole on the Sunday previous to the homicide. Prisoner said, "I thought I had left friends in Syracuse; you know about this affair between Mary and Hiscock." I told him I knew nothing of it. He insisted I was responsible as a Christian woman, and said he was ruined and disgraced. He was wild and excited; he blamed my mother; he also said, "I shall be brought to the grave in sorrow;" he said my mother should take care of her daughter.

*Nicholas Sigsbee* was sworn—Was Under Sheriff of Albany county at the time of the homicide; witness testified that prisoner requested him, shortly after the homicide, to procure a place for his wife and children to board, and to get it near the jail, if possible, so that she could visit him daily.

Mr. Tremain then asked the witness if Gen. Cole ever told the witness he had no intention to kill Hiscock until after he had seen Barto at the Delavan House after he arrived here on



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The witness stated that he answered the letter the same day he received it.

Mr. Tremain asked the prisoner's counsel if they intended to prove the contents of that reply. Mr. Hadley replied in the affirmative. It was thereupon objected that it could not be done unless it was shown to be lost. The Court stated that it would permit the prisoner to be examined upon the subject of the loss of the letter. The prisoner's counsel stated that they had not yet decided whether they would take that course.

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The witness further stated that he had heard the prisoner tell his wife in jail that their relations must cease, and that she must discontinue her visits to the jail. He could not say that he had seen Mrs. Cole at the jail more than twice. The prisoner's manner towards her was very kind. She remained here about a week, and then returned after Senator Cole arrived, but how long she then remained the witness does not recollect.

The prisoner's counsel proposed to read the letter from Mrs. Cole to the prisoner, read upon the former trial, which is designated as her "second confession," and which was kept by Mr. Hadley in his safe till produced at a meeting of the counsel.

Mr. Tremain objected to the reading of the letter upon the ground that there was no proof of its ever having been seen by the prisoner. It had been read at the former trial by consent, which the counsel decline to give now. The counsel claims that this paper was the production of collusion, and never seen by the prisoner.

Judge Hogeboom decided to admit the reading of the letter.

The testimony of John M. Bailey, Assistant District-Attorney, as to Mrs. Cuyler's testimony before the Grand Jury, was read; also, that of Henry Smith, District-Attorney, relative to the testimony of both Mr. and Mrs. Cuyler before the Grand Jury. The object of this evidence was to show that the testimony of both these witnesses before the Grand Jury and upon the former trial of the case differed in essential particulars.

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the day of the homicide ; also, if prisoner had told him Hiscock had not full intercourse with his (Cole's) wife.

The question was objected to, and after elaborate argument the Court overruled the objection.

Witness then replied that prisoner told him that Hiscock had never wholly had connection with his wife, and that if Mr. Barto had taken more interest in his case, the homicide would never have occurred. Prisoner said that after he had told Barto of the circumstances he (Barto) walked out of the room, saying, " You will think better of this in the morning," and he (Cole) thought he had no alternative but to shoot Hiscock.

The witness was subjected to a very searching cross-examination, in the course of which he was asked if he had ever told Edwin R. Fox that Cole was a cold-blooded murderer—that he (Sigsbee) would hang Cole, and that the next time he got a jury he would fix him. The witness denied ever saying so to any person. Never told any person he would hang prisoner like a dog.

*Edwin R. Fox*, of Rochester, was then sworn and testified that Sigsbee had told him that Cole was a cold-blooded murderer, and that the next time he would have all countrymen on the jury and he would hang Cole.

On the cross-examination of witness, he stated he had killed a negro soldier in his company for insubordination, and had been afterwards dismissed from the army by Gen. Butler for speaking disrespectfully of Gen. Butler.

*Peter Allanson* testified that Sigsbee had frequently told witness he would hang Cole like a dog, and that Cole was a cold-blooded murderer.

The testimony in the case here closed.

Judge Hogeboom stated that he would permit three counsel to address the jury, but that the time consumed by the counsel on either side, must, in the aggregate, be confined to six hours.

Judge Parker, on behalf of the prisoner, submitted the following as the points that he desired the Court to embody in his charge to the jury :

First : That if the jury find that the prisoner committed the homicide by reason of physical disease, or some moral cause not voluntarily induced by himself, unable to

control his will or actions, then, in judgment of law, he was insane and not guilty of any offence.

Second : If the prisoner was moved by an insane impulse controlling his will and judgment, too powerful for resistance, and such insane impulse arising from physical or moral causes, then prisoner is not guilty.

Third : If the prisoner was suffering great depression of spirits from physical causes, and that after the discoveries made to him and because of the want of sleep and the distress of mind resulting from it, he casually met Hiscock and was borne away by an uncontrollable frenzy to take his life, he is irresponsible.

Fourth : If the jury have a reasonable doubt of the sanity of the prisoner, he is entitled to an acquittal.

Fifth : The question of sanity is one wholly of facts for the jury.

Mr. Tremain, on the part of the prosecution, submitted the following points :

First : It is not necessary to make out a case of premeditation, that there should be any lapse of time between the period of intention and of execution.

Second : The design is none the less because it is coupled with a condition of passion.

Third : If the prisoner was sane at the time of the homicide, it is no excuse that he had before been informed of an act of adultery.

Fourth : There is no proof whatever of adultery in this case.

Fifth : If the prisoner knew the consequences of his act of killing, he is liable. Mere moroseness of disposition is not insanity. The insanity must be such as to deprive him of reason.

Sixth : If the prisoner sought out the deceased with deadly weapons and for the purpose of abusing him, such facts are strong evidence of insanity.

Seventh : The prisoner's declarations are no evidence of the truth of the assertions embodied in them. They are only allowed as evidence to show the condition of his mind as to its soundness, and the same is true of the declarations of his wife.

Eighth : Though the prisoner was in a passion, it is no excuse if he was at the time sane.

Ninth : The weight of the medical evidence is a question for the jury.

Mr. Mitchell opened the argument on the part of the prisoner. He spoke of the importance and of the interest felt in the case. He alluded to the strong array of counsel on the part of the prosecution. Usually the prosecution in such cases is left to the District-Attorney of the county and to the Attorney-General. But in this case two personal friends of the deceased had been employed to urge the case to a conviction of the prisoner. The counsel animadverted with severity upon the declaration of the District-Attorney in his opening that the prisoner had committed the homicide for the purpose of obtaining notoriety and eclat.

The counsel spoke of the character of the prisoner during all his life, and of the brilliant reputation that he had acquired in the army, and asked how he could have been guilty of such an act as this without being controlled by some purpose such as is not found in men under like circumstances, when governed by reason. The only possible hypothesis upon which such conduct can be accounted for is in the insanity of the prisoner.

The counsel at length adverted to the testimony upon the subject of the insanity of the prisoner and of his family, and to the law applicable to the question. The medical statistics show that out of the aggregate number of 482 cases of insanity, the number of 110 arose from hereditary causes and 60 from domestic afflictions. The prisoner had been shown by the proof to have been subject to both these causes.

The counsel described the circumstances that existed for three days at Syracuse before the journey of the prisoner to Albany, the disclosures there made to him, his great agony of mind, his sleeplessness and deprivation of food, and claimed from this that his mind was disordered and his reason overthrown. If the facts and motives that impelled the prisoner would not produce insanity, he, the counsel, would like to know any state of circumstances that would. The counsel eloquently depicted the domestic calamity that had befallen his client, and closed with an earnest appeal to the jury to extend to him their sympathy and give him a deliverance by their verdict.

Mr. Sedgwick opened the argument on the part of the pros-

ecution. Under the statutory definition of murder, it is not necessary that the design shall have existed some time before the deed; it may arise at the very time. But in this case, unless the defence of insanity or of justification be sustained, the facts show the conception of the design sometime before the homicide.

As to the defence of alleged adultery the law is well settled. It is no defence, and the Court has so already adjudged it in this case, by the exclusion of evidence upon that point. As to the statements made by the opposing counsel that an acquittal had followed in every case where the defence of adultery was set up, Mr. Sedgwick replied that in such case the proof of adultery had been for some reason admitted by the Court, which was not the case at this trial. The evidence permitted in this case was only given with view to the question of insanity. The prisoner in this case had himself adjudged the question of adultery, and had executed sentence upon the deceased. Were Hiscock permitted, by his existence, to have a defence to this accusation, he could have done it successfully. The counsel cannot believe, in the absence of all proof, that a jury will justify a man for thus taking the life of his fellow.

As to the question of insanity, the law adjudges every man to be sane till the contrary be shown, for such is the normal condition of man. As to the degree of insanity, it must be shown that it is such as to dethrone the reason. No mere peculiarities of disposition or temper will excuse the commission of crime. No man is wholly perfect in his mind. The line to be drawn is that between human passions, which he must restrain, and that morbid condition of mind by which the party does not know the right or the wrong of the act he commits. The true test of insanity is the existence of "mental delusions." If these exist, a man may be held to be irresponsible; but if a man acts upon facts or information, and visits his passion upon another, then it is a case of malice or revenge, and he is subject to punishment. The counsel closed with an appeal to the jury not to make themselves accomplices in the act of vengeance done by the prisoner by justifying it.

Mr. Beach followed on the part of the prisoner. He averred that the prosecution had been marked by unwarranted sever-

ity and vindictive temper. But he looked with pleasure upon the prospect that the tragic death of Hiscock is not to be followed by another ignominious death. The counsel made an eloquent apostrophe to human life, its mysterious origin and its uncertain destiny, and appealed to the jury to see to it that they were assured of their being right before they destroyed it in the person of the accused.

The counsel animadverted with severity upon the employment of counsel in this case by friends and relatives of the deceased, and who represented the malice that governed them. He denominated that counsel as the "hired champion of the adulterer." Upon the other, the State, which is the ostensible and real prosecutor, it is not impelled by malice or vindictiveness. He referred to the rejection of two of the jurors after having been sworn as being singular and unexampled. Those jurors had been acceptable till some impertinent intermeddler whispered in the ear of the District-Attorney something about those jurors.

The counsel also complained of the refusal to produce some of the jurors sworn before the Grand Jury, and the previous trial, and of the appearance of the District-Attorney as a witness in the case. The latter had also obtruded his "belief" in this case, and for that the counsel arraigned him.

District-Attorney Smith renewed the argument in support of the prosecution. The counsel said that under the facts of the case as they transpired at the commission of the homicide at Stanwix Hall, it is a case of murder. Such is the law of the State and of all civilized countries. The only question, then, to pass upon is, whether, upon the assumption set up by the prisoner, a legal defence has been made out. That defence is the insanity of the prisoner. The counsel was free to say that if the jury believe the prisoner to have been a lunatic when he committed the deed, he did not and could not ask a conviction. But he had yet to learn, and hoped he never should learn, that the plea of insanity should avail a prisoner in every case when he possessed the means to procure witnesses and able and ingenious counsel in support of such a plea. He desired the jury to determine this case solely from the law and the facts, and he had been astounded to hear for the first time in his life the declaration by counsel

in this case that a jury should find a verdict in harmony to their own preconceived notions of the case, or what ought to be the law in relation to it.

In answer to the criticism made upon the appearance of his associate counsel, Mr. Smith replied that those counsel had been employed only to meet the strong array made in support of the defence. He had felt unwilling to undertake single handed the prosecution of the case against such an opposing array. To that end he had selected Mr. Sedgwick. Mr. Tremain had been employed in lieu of the Attorney-General, who could not attend the case.

The counsel gave his reason for having sought the rejection of the two jurors who it was proven had prejudged the case. He could not have done otherwise, when advised of the facts. Mr. Beach had rebuked him for expressing his belief in the prisoner's guilt, and yet the Court had sustained him (Mr. S.), for having made that avowal.

Mr. Smith alluded to a criticism made by Mr. Beach upon a remark alleged to have been made by Mr. Sedgwick at the former trial, as to the character of his employment. Mr. Beach asked privilege to read from the report of that trial in support of his assertion. The Court declined to permit the reading and Mr. Sedgwick denied having made any such remark.

Mr. Smith spoke of a scriptural illustration made by the opposing counsel. He, Mr. S., would ask the counsel to read that narrative in the scriptures wherein "he who is without sin is asked to throw the first stone." Mr. S. thought that if the moral conveyed in that narrative had been studied and observed by the opposite counsel he would not have been so ready to assail the adulterer.

Mr. Smith was interrupted by Mr. Brady and asked if he thought it right for counsel to state their *belief* of the guilt or innocence of a prisoner?

Mr. Smith replied that he thought it right, and that if a District-Attorney sought the conviction of a man whom he did not believe guilty he was a dishonorable man.

The counsel discussed the character of the letter written by the prisoner to Pelton on the Friday before the homicide. That letter, as he claimed, evinced entire sanity of mind and method of purpose. Though the letter is wholly upon the subject of the rumors about his wife, it is written coolly and

dispassionately, and in a business tone and style. It embodies no symptom of frenzy or insanity. He also claimed that the "confession" made by his wife on the following Sunday, was the result of a joint negotiation between the prisoner and his wife, and for the purpose of fixing a crime upon Hiscock and saving the honor of the wife. And yet a wife who thus confessed herself to be dishonored, was not, either as the result of the frenzy or sanity of the prisoner, discarded by him, but remained with him during all the time in Syracuse and on the way to Albany. He charged that the memorandum in pencil mark at the top of the "confession," was an after-thought and most probably done after their arrival at the Delavan House. The prisoner's purpose was to murder Hiscock and save the honor of his wife.

As to the "second confession," he believed it had been gotten up for the purpose of this defence. The paper shows upon its face that if it was composed and written by Mrs. Cole, then, to say the least, she is not a very delicate woman. If the paper was written by the wife, as alleged, why was it left with Cuyler instead of being kept by the prisoner, and brought by him to Albany with the other confession? And, according to the proof, this paper, sealed up when delivered to the counsel by Cuyler, was kept for a long while before it was opened before a meeting of the several counsel of the prisoner. The first confession charged the crime of rape. That would have been the subject of a criminal prosecution. And so it was deemed best to change the offence to that of seduction. If the paper be true, then he intended to have one piece of evidence on his person, and another elsewhere, to fall back upon.

The counsel stated the conduct of the prisoner on the Sunday and Monday before the homicide to show his sanity, and alluded with especial emphasis to the facts attending the purchase of the pistols. The conduct of Cuyler and Mrs. Cuyler shows that they did not regard the prisoner as being in a passion or dangerous mood. Why was the prisoner's wife during that time kept locked up and secluded from her friends?

As to the events of Tuesday, the counsel claimed that the evidence shows that the prisoner came to Albany for the purpose of killing Hiscock, and that too upon the floor of the Constitutional Convention. The letter left by the prisoner

with Mrs. Cuyler, supports that assumption. The letter, among other things, is entirely inconsistent with "the second confession," then, as alleged, in the possession of the prisoner. That letter asks Mrs. Cuyler "not to blame Mrs. Cole unjustly," though, according to the second confession, she was a dishonored wanton.

The trip to Albany shows entire cordiality between the prisoner and his wife, and an absence of that fear of notice and shame of condition that has been alleged. It is sufficient that the defence did not call as a witness Henry Barto, the brother-in-law of the prisoner, and who saw him at the Delavan after the arrival at Albany. At once after the killing, the prisoner sets up his defence. He told Summers that he had not intended to kill Hiscock "in that manner." As soon as he got to the station house he wrote a letter to his wife. All the prisoner's conduct then showed sanity. He recounts the circumstances and gives his statement to the reporters. And from the time of the killing to this moment, there is no pretence that he has ever exhibited a single evidence of insanity.

The counsel closed his able and eloquent argument with an earnest appeal to the jury to do their duty without fear or favor, and to administer the law in this as they would in any other case. It was their duty to see that men were taught to restrain their passion and not be permitted to visit their vengeance upon those whom they hate or against whom they have a grievance, in their own manner and by their own instruments.

Mr. Brady concluded the argument for the defence. He complimented the Court upon the indulgence that it had shown in the trial, and for the courtesy as well as ability that had marked its conduct and decisions. He also, despite the sharpness of some conflicts, spoke kindly and charitably of several counsel on either side in the case.

As the District-Attorney had stated his belief, he, Mr. B., would give his; and it is, that when Hiscock fell, he met a deserved fate, and that the act was committed by the prisoner while in a state of uncontrollable frenzy.

Whatever may be the law, the dictates of humanity, as impressed by the Creator upon his creatures, teach that Hiscock deserved the death he met. If, said the counsel, my sister had been the victim of the seducer, and I had not shot



him down for his crime, I should consider myself unfit to live among men. Shall the man, who has been wronged be governed by the coldness of the counting-house, or other place of human business? Nature throughout all her domain in the brute creation as among intelligent beings, teaches us the sanctity of home and of relations by blood, and the earnestness with which they will always be defended, under whatever circumstances may exist, and without regard to circumstances.

It has been said that the defence rests upon two grounds. The one is that the prisoner had the right to kill an adulterer. That rests upon a natural law that no human institutions can control. The prisoner was not responsible for his act and the reason was the conduct of Hiscock. If he was deranged, Hiscock made him so.

The counsel alluded to the services of the prisoner in the army, and what were his hopes and expectations when he arrived home. But what recompense would reward a man for his efforts and sacrifices, if when he returns home, he finds a stain upon his wife's honor, though it be as small as the point of a needle, and when any man, and especially one who stands in the relation of a lawyer, enters a house and steals from it the honor of a female inmate, he deserves to suffer death. Can it be believed that the prisoner was a sane man when he committed this deed? He was no more sane than a man who wakes up at night in a dream and under the supposition that a burglar is in his house. The history of the prisoner's case shows him to have been insane. Insanity, like very many diseases, can, in some instances, only be proved by the history of the case, and not by any outward or visible indications. The existence of the headache, or indigestion, or many other maladies, cannot be determined by a physician except from the statements of his patient.

The counsel closed his argument by a reference to the history of Julius Cæsar. He was one of the greatest men that ever lived in his sphere of human life and activity. He was assaulted in the Senate Chamber and killed. He was struck down by daggers as he stood erect in his toga, and never bent his head. His best friend, the Hiscock of that day, struck the last blow at his heart. He exclaimed, as that friend struck him, "*Et tu Bru'ce!*" and fell at the foot of Pompey's

**Pillar.** But Cæsar had the consolation of knowing that it was a friend who had struck the blow. Men may think that they are wise and can stand any shock that may be given them, but it remains to be known what may happen when a calamity such as was visited upon the prisoner shall befall them. Another Festival is near at hand. When the jury shall set down to their Christmas dinners their families may inquire as to what has become of the prisoner. He believed that they would be enabled to say that the prisoner was free, and as ready to receive the congratulations of his friends, as would be the members of the jury.

Judge Parker was permitted to read some authorities upon the subject of insanity, and in accordance with which he asked the Court to charge the jury.

Mr. Tremain closed the argument on the part of the People. He alluded to his varied practice at the Bar for a period of thirty years. He had seen the surging tide of human passion and crime as developed in the several trials for capital offences in which he had been engaged, and he now felt the importance of this case.

He referred to the character of the deceased, his position in society and at the Bar, and his reputation as a man. He alluded to his presence in the city as a member of the Constitutional Convention, and his position at Stanwix Hall, standing there quietly conversing with friends, when the prisoner suddenly appeared, presented a pistol, and without one word of warning or explanation, shot him down dead. That prisoner is now on trial for that deed, and doctrines are set up in his defence that if allowed to prevail would break down all the safeguards of society against violence and crime. He referred to the slanders that had been heaped upon the character and memory of the deceased, and declared that he would be false to his position in the case, and to his profession, to the laws of the State, to the memory of the dead, and to every principle of justice and truth, if he did not hurl back these assaults and strip from the defence the flimsy disguises with which it had been attempted to clothe these assaults.

As to the attacks made upon the counsel for the People, he said that if a stranger had entered the court he would have supposed that the counsel were on trial, and not George W.

Cole. He asked if this fact was not evidence of the want of a better defence for the prisoner. The prisoner was defended by five of the most eminent counsel in the State. One was Judge Parker, of our city, eminent for his ability. Another is a gentleman who always has such faith in his counsel that he believes every one insane or malicious who does not agree with him. Another of the counsel is the Cicero of Central New York.

Mr. Tremain here read some remarks made by Mr. Mitchell at Syracuse, at a meeting of the Bar of Syracuse, in which he, Mr. Mitchell, denounced the homicide as a cowardly murder. Messrs. Beach and Brady were complimented as able and renowned advocates. He claimed that against this great array of talent, the People had the right to be represented by the three counsel who had appeared in this case. It has been declared that because there is no law to punish adultery with married women, men have the right to take vengeance to themselves. But the counsel believed that no other laws than those that now exist, would ever be passed. No law is necessary to protect the virtue of a married woman thirty-five years of age, with all the sanctions around her of duty to her husband, her children, and her sex, her society and her Creator. Every honest and pure woman would reject with scorn a proposition to protect her virtue against the assaults of the seducer by any law of the Legislature.

Mr. Tremain referred to the statute relative to murder and manslaughter.

Mr. Brady interposed and stated that the defence claimed that the prisoner was guilty of murder, and nothing else, if guilty at all.

Mr. Tremain asserted that the case showed premeditation to commit murder. The purchase of the two pistols showed it. The prisoner told Mrs. Cuyler that he intended to meet Hiscock at Albany, and there make him abase himself. He left the Delavan House to kill Hiscock, and he carried out his purpose. And then, according to the instructions given to Mrs. Cuyler, the intelligence was sent by telegraph and was to be published at once, and if not in the regular edition of the newspaper, then in an extra.

The counsel for prisoner have asked for a speedy verdict of acquittal. He, Mr. Tremain, will say so too; that if this deed

of blood is to be sanctioned by the jury, then let it be done quickly, and so that the gray-haired father of Hiscock may take his gun to inflict summary vengeance upon the murderer of his son.

No case of a kindred nature in the history of the criminal law, within the knowledge of any man, is more full of the proof of premeditation than this.

Mr. Tremain addressed the Court upon the point as to which side must bring the burden of proof where the defence is insanity, and quoted several authorities. He also cited cases in support of his position upon the question of insanity, its character and manifestations. As to this case, the hypothetical statement made as the basis of the medical witnesses on the part of the defence, is not true. But the opposite counsel have no faith in the defence of insanity. It is used as a mere cover for their true defence. If not, why did Mr. Beach devote seven-eighths of his address to the question of adultery, and only one-eighth to that of insanity? Those counsel have justified the deed solely upon the ground of justice and right in slaying an adulterer. The several cases quoted do not support the position that juries have declared in favor of such a doctrine. If the defence here shall be sustained, then every man that has been maligned by a newspaper, that has been robbed of his property, that has had his children improperly chastised in school, may slay the man that did it. If a wife shall report to her husband that a man had rudely jostled her in a crowd, or that, in her imagination, he had cast lustful eyes towards her, he may shoot him down, and for the reason given in Scripture, that "he who lusteth after a woman commits adultery in his heart."

There is no proof of adultery, and so the Judge has told and will tell you. I objected to proof upon the subject, because it was not admissible under the law, and because I was unwilling to permit all the sluiceways of Syracuse to be dragged to get proof upon the point. I believe Hiscock to have been as guiltless in this respect as any member of the jury. The proof shows that Mrs. Cole was possessed of property, that she had made a will, and by that will her property might pass out of that channel in the direction towards her husband, which it would take if she died intestate, and that Hiscock had, as her counsel, drawn that will.

The prisoner never intended to break off his marital relations with his wife ; all the proof shows it. The medical profession of Albany deserves credit for their conduct in this case, in refusing to aid the sham defence. The defence was compelled to go elsewhere for that kind of aid.

The counsel closed with a most eloquent appeal to the jury to discharge their duty under and in obedience to the law, and not to permit a spurious sympathy for the criminal to induce them to give a perverse verdict, and one not true according to their oaths.

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#### CHARGE OF JUDGE HOGEBOM.

1. This protracted trial is about to be closed, and to be submitted to you for final decision. You are prepared for it by faithful attention to the testimony, and to the arguments of counsel.

This attention is called for by the magnitude and importance of the case. The position of the jury is a solemn and responsible one. The life and liberty of a fellow-citizen is in your hands, and is not to be disposed of without the most anxious and serious consideration of all the circumstances, and grave reflection upon the weighty results that hang upon your decision. Nevertheless, it is a duty which you cannot decline, which the law has imposed upon you, which you have taken oath to discharge with conscientiousness and fidelity, which must be discharged with absolute fearlessness and impartiality, whatever may be the consequences, and upon whomsoever they may fall.

2. George W. Cole is indicted for the murder of L. Harris Hiscock on the 4th of June, 1867, at Stanwix Hall, in the city of Albany. Under this indictment, he may, if the evidence justifies it, be convicted of either of the two degrees of murder, or of the four degrees of manslaughter, or acquitted upon the ground of justifiable or excusable homicide, or of an absolute or temporary deprivation of reason, the result of settled insanity, or of a momentary but ungovernable frenzy induced by the circumstances of the particular occasion.

3. It may be desirable to inform you particularly of the

ingredients which go to make up the crimes of murder and manslaughter, in their various degrees. Murder, in the first degree, so far as it can have application to this particular case, is the killing of a human being, when not justifiable or excusable, nor coming under the head of manslaughter, and perpetrated with a premeditated design to effect death.

The premeditated design must be completely formed before the act of killing, and must precede the act, but no particular space of time is necessary to intervene between the complete conception of the design and its execution. If a perfected design precedes the act, it is murder. This is murder in the first degree, and its punishment is death.

Murder in the second degree embraces all the cases of murder which are not included in the definition of murder in the first degree. It is not well defined in the law, but may safely, I think, be held to include cases of unjustifiable and unlawful and inexcusable killing, characterized by premeditated design, or of no premeditation beyond an intention to produce death; but not by that degree of enormity, willfulness and premeditation which mark the commission of murder in the first degree. The line of distinction between murder in the first degree, and in the second degree, is not very clearly defined in the statute; and something is left to the sound and intelligent judgment of the jury in fixing the degree of the crime. The punishment of murder in the second degree, if I have read the statute right, is imprisonment in the State prison not less than ten years.

Manslaughter in the first degree is not applicable to the facts of this case. Perhaps, not manslaughter in the second degree; though one division of it, the killing of a human being without a design to effect death, in the heat of passion, *but in a cruel and unusual manner*, might possibly be contended to embrace it; but as manslaughter in the third degree is the same offence, except that it is killing accomplished by a *dangerous weapon* instead of a *cruel and unusual manner*, I present that aspect of the offence to you as better adapted to the facts of this case than manslaughter in the second degree, and also as being milder in its penalty and therefore more favorable to the prisoner. The punishment of manslaughter in the third degree is, I believe, as modified by the statute of 1865, imprisonment in the State prison for not less than one year and not

more than four years. Every other killing of a human being by the act, procurement or culpable negligence of another, where not justifiable, nor excusable, nor murder, nor manslaughter of a higher degree, is manslaughter in the fourth degree. The punishment of manslaughter in the fourth degree, is imprisonment in the State prison for not exceeding one year, or in the county jail not exceeding one year; or by fine not exceeding \$1,000, or by both such fine and imprisonment.

The feature which particularly distinguishes manslaughter from murder is, the absence of a design to effect death.

Applying these definitions to this particular case; if you believe Cole killed Hiscock without legal justification or excuse, in the possession of his faculties, and with a mind capable of comprehending the quality of the act, and with a premeditated design to effect his death, he is guilty of murder in the first or second degree, according to the enormity of the act and the degree of premeditation with which it was perpetrated. If done without a design to effect death, but in the heat of passion and with a dangerous weapon, then he is guilty of manslaughter in the third degree. If done in some other way, but without a design to effect death, and in the heat of passion, then he is guilty of manslaughter in the fourth degree.

But to constitute guilt and criminalty in either of these various ways, it is necessary that the person should be capable of distinguishing between right and wrong in the particular case, and as applied to the features of the particular transaction; should be in the possession of his faculties in the exercise of his reason; not necessarily with faculties in the same vigor or force or under the same equanimity of mind as when perfectly cool, or in perfect health, but with faculties from which reason is not permanently or temporarily dethroned. All men have not the same mental powers or characteristics—the same man is not at all times in the same favorable condition for the cool and equable exercise of his reason or mental powers; the strength and vigor of his faculties may even be temporarily or permanently impaired or diminished by sickness or bodily ailment, or by exciting causes calculated to disturb his equanimity or to influence his passions, yet if he be in the possession of his senses—able to judge of the moral quali-

ties of his acts, and of the particular act for which he is arraigned, and to distinguish between right and wrong in regard to it, he is morally and legally responsible for his conduct, amenable to the laws of the land, and must abide by its mandates and its penalties. If, then, George W. Cole was in this condition, he must, like other men, be tried by the standards of the law and submit to its judgment. If on the contrary he committed this homicide when reason was dethroned, either permanently or temporarily, no matter from what cause, he is not amenable to the law, and is not subject to its punishment or its penalties.

And of all these facts necessary to establish crime, and to constitute responsibility for its commission, the people are to satisfy you and to satisfy you beyond a reasonable doubt. They are to convince you that the prisoner was a rational being in the possession of his senses, with the power to discriminate between right and wrong in the particular case, and that the act which he committed, and for which he is now on trial, falls within one of the various offences to which I have referred. And if there be a rational doubt of this upon your minds, the prisoner is entitled to the benefit of that doubt. The prosecution must make out to your satisfaction the guilt of the prisoner in regard to all the features of the crime, and satisfy you of their existence beyond a reasonable doubt. Thus, if the charge be murder, they must convince you that the killing was perpetrated by the defendant, that it was done with premeditated design and by a person of sane mind. No doubt sanity is the normal or usual condition of a human being, and hence ordinarily you would be satisfied of its existence by much less proof than you would be in some other cases. But still either by presumption of law or by positive proof you must be satisfied of its existence, and of its existence beyond a reasonable doubt. This doubt, however, must be one that fairly arises upon the evidence, not merely speculative or fanciful, but one that commends itself to your judgment upon a fair and rational construction of the evidence, not to be lightly or capriciously indulged, and especially not as a mere mode of evading the responsibility of a careful and deliberate judgment upon the testimony, but a doubt resting upon your minds as the result of a most conscientious examination of the evidence.



These are the tests which you must bring to the examination and decision of this case, and, by which you must be controlled in the result to which you ultimately arrive.

Having thus defined the offences of which it is possible under this indictment to convict the prisoner, if your views of the evidence warrant it, let us turn our attention a little more particularly to the facts of this case and the allegations of the party in regard to them.

1. The leading fact of the killing of L. Harris Hiscock by George W. Cole, is not denied. It is very distinctly proved to have occurred at Stanwix Hall, Albany, on the 4th of June, 1867, by a pistol shot, producing almost instant death. As no provocation appears to have been given at the time of the homicide, nor any conversation was had between the parties at the moment, we must probably look elsewhere for the cause which produced it, and for the justification by which it is to be maintained. And there being no justification (that question, however, I submit to you) apparent in the circumstances, occurring at the time, you would probably consider yourself justified in concluding that in the absence of explanatory circumstances, it would be safe to infer malice aforethought, or a premeditated design to effect the death of the person killed.

2. There are, however, if I understand the line of defence, two leading reasons claimed to exist which should protect the defendant from punishment.

1st. Because the defendant was not in a state of mind that renders him responsible for the act—in other words, that from causes operating for a considerable length of time beforehand, or recently or suddenly occurring, he was mentally unconscious of the nature of the act in which he was engaged, and legally irresponsible for it.

2d. Because the deceased had seduced the wife of the defendant and that in the transport of rage produced in the defendant by such an invasion of his domestic rights, or by the sudden and overwhelming disclosure of the fact to him, he committed the homicide for which he is now on trial.

As the first of these defences, if established, furnishes a complete and absolute protection to the defendant from any liability to the law for the act committed, it may be well to examine that first in order.

1. The first defence relied on then is *insanity*, a deprivation of reason at the time the act was committed, resulting either from a settled and well established mental alienation, or from the pressure and overpowering weight of the circumstances occurring at the time, and from the transport of passion arising from sudden and crushing information of the infidelity of his wife, yielding to the arts and seductions of her paramour.

As I have just stated, these are valid defences if satisfactorily established by the evidence.

If reason was in fact dethroned, if Cole was not at the time in the possession of his faculties, if they were overpowered and lost in the presence and under the influence of an overwhelming domestic calamity; if Cole was at the time incapable of distinguishing between right and wrong, in regard to this transaction, or of appreciating the moral quality of his act, and the evidence satisfies you that this was so, then, like every other man in that condition, he cannot be held criminally responsible for the homicide, and is entitled to your verdict of acquittal.

But while you must remember that the prisoner's sanity must be established by the prosecution, and established beyond a reasonable doubt, you must also remember that the ordinary condition of man is sanity, and not insanity, and that, as a general rule, he is responsible for his acts, and not exempt from responsibility.

In judging of Cole's mental condition, it is highly important particularly to examine his conduct at the time and about the time of the transaction.

If Cole committed this act with apparent coolness and deliberation—although more or less excited—spoke of it with apparent intelligence and decision, and appreciation of its character and effect—if he mentioned it immediately afterwards as if he understood what he had been doing and recognized its nature and object; if he armed himself with a pistol or pistols the day before at Syracuse, and you shall conclude he did so with reference to this encounter and this occasion, of which you are to judge with most careful discrimination, because it bears with much force on the issues in this case; if he took measures to have a weapon or weapons in a situation to be effective, and loaded them so as to be likely to operate, and if, after reflection on the subject and a conference with one

or more of his friends he proceeded deliberately to the commission of this act of killing with vigor and effect, these are all legitimate subjects for your consideration, as well on the question of *sanity* as on the question of a premeditated design to effect the death of the person killed.

You must judge of the character and motive of the defendant's acts.

What was his object in providing himself with these pistols? Was it with reference to this occasion, or was it connected with the discharge of his duties in the revenue service? Was the killing, as the defendant's counsel contend, not premeditated when the prisoner visited and entered Stanwix Hall—was he moved to the commission of this act by the sudden access and irresistible pressure of excited and overwhelming passion, roused by the sudden and unexpected sight of the destroyer of his domestic peace, or him whom he supposed to be such, the defiler of his marriage bed, the seducer of the dearest object of his affections, dethroning his reason, and pressing him on to the commission of this act under the influence of an ungovernable frenzy, unsettling, for the time, his faculties, and enthroning insanity in their place?

These are questions submitted to your most careful and deliberate judgment, and will require the application of your best faculties and your most impartial and conscientious deliberations, in order to conduct you to a right result.

The defendant's state of mind as evinced by his conduct, by his declarations and his acts, by his bodily ailments as affecting his mental condition, and his cheerful or moody temperament, the change, if there was one, in the character of his temper and disposition, the extent to which it was carried, the causes which produced it, and other circumstances not necessary to be alluded to at greater length, as exhibited at and about the period of the homicide, and for a period previous thereto, more or less distant from the central and important point to which your attention will naturally be more especially directed, are all important subjects for your consideration, and are entitled to more or less weight according to their nature, and to some extent according to their nearness to the scene of the fatal transaction.

In illustration of the prisoner's mental condition, much med-

ical evidence has been introduced, and must be considered by you.

It is for you to judge of its weight and character, and to determine it by the best light you have.

As one means of determining it, it seems to me (it is however for you to judge) that other things being equal, those medical witnesses who were acquainted with the prisoner, with his ordinary habits and temperament, with his personal history, before and at the time of the transaction, would on that account possess some advantages in forming an estimate of the prisoner's mental condition.

Still, much must depend upon the capacity, judgment and discrimination of the particular witness, and upon the manner in which the testimony is presented.

With witnesses who have not had a personal acquaintance with the prisoner, or opportunities for a personal examination, the weight of their testimony must depend somewhat upon evidences of the causes, influences, symptoms, and characteristics which usually mark the presence of mental derangement.

Some of this, perhaps much of this, where the prisoner has not been known or personally examined, must necessarily be more or less of mere *opinion*, the value of which it is not always possible to correctly estimate.

Several causes may operate to produce insanity, and are entitled to more or less consideration in the particular case.

1st. Insanity is sometimes inherited—transmitted down in the line of family descent, occasionally not exhibiting itself, and again reappearing after one or more generations.

Some evidence has been given, that this *taint* of insanity existed in the family of the defendant. This is a subject for your consideration, but you must recollect that the reappearance of this mental disorder is not uniform, and you must carefully scan the prisoner's declarations, his acts, his general conduct, his mental manifestations, to see whether you find in them the traces of actual insanity—that actual mental derangement, which alone can avail, so far as this point is concerned, which alone can avail to accomplish perfect immunity from criminal responsibility.

Again it is said that the prisoner's bodily ailments were of such a character as justly to lead to the inference that they

were calculated to affect and did affect his mental organization and developments in such a way as to produce insanity.

There seems no reason to doubt that in 1862 Gen. Cole, while doing honorable service in the cause of his country—for which, whatever may be his fate, under this accusation, he deserves grateful recognition—received a severe and crushing injury, followed by other injuries thereafter, from the effects of which he has not yet fully recovered, which more or less disabled him, and which were calculated to have and did have a depressing effect upon his spirits and temperament, making him more or less moody and melancholy, producing more or less and sometimes very considerable depression of spirits, resulting, as his counsel claim, in a settled melancholy, allied to, if not identical with the *melancholia* of the medical profession and constituting one of the various forms in which, as they contend, insanity is manifested.

But even if Cole's mental manifestations were of this clear and decided character, and had assumed the form of the *melancholia* of the doctors, this is not precisely the insanity required by the law to shield its possessor or subject from responsibility to the criminal laws of the land. The insanity of the medical profession, as described before you by several of its leading professors, is not precisely the insanity of the law. They describe *melancholia*, which seems to be nearly synonymous with a settled melancholy of an excessive, aggravated and unreasonable character, indicated by a highly nervous and usually moody temperament, and by a mind more or less morbidly affected in its ordinary functions, as *insanity*.

But while these may be more or less present in legal insanity or the insanity recognized by the law, they are not precisely that kind of insanity or mental unsoundness which marks exemption from criminal responsibility. The law, in determining a person's responsibility for or immunity from crime, applies a very simple but easily comprehended test, and it is this. Did the accused party understand the nature of the act in which he was engaged, so as to understand whether it was right or wrong? Was his reason dethroned or operative? Was he able to comprehend the nature of his conduct or not? If he was, then he is responsible to the laws of his country, as bound to obey them, and is punishable for their violation.

It may be, therefore, that he was subject to melancholy in an aggravated form. So long as it does not sap or subvert the foundations of his intellectual faculties, he may be carried under the pressure of excited feeling into an outburst of passion which may be next to uncontrollable; yet, if reason preserves her dominion over his intellectual powers, and has not yielded her throne, to the frenzy of mental alienation or madness—if notwithstanding all this he has sufficient comprehension of the nature of the act in which he is engaged to appreciate its moral quality, to distinguish right from wrong—if he knows that he is doing an act forbidden by law, he is held accountable for his acts, he must be regarded as violating the laws of his country, and must abide the fate of other criminals. (Here was read from the books, the true rule as to criminal responsibility.)\*

This is all I deem it necessary to say to you on this first and principal branch of the defence. I cannot comment upon the evidence in detail. This has been done in the most able and discriminating manner by counsel. And you will probably be able to come to a conclusion satisfactory to yourselves on this leading branch of the defence. The conduct, the temperament, the bodily ailments, the mental manifestations, the personal history, the traits and characteristics of the defendant have been pretty thoroughly scanned and held up to your view, as exhibited from 1861 to the present time. And I think I need not make any further suggestion to you in regard to them, than to suggest that as far as possible you bring them all to a practical test and determine by his actual mental manifestations as developed in his character, his declarations and his conduct, his ordinary and daily habits of life, his attention to and capacity for business, the impression made in all these respects upon those who associated with and knew him, whether he should stand exempt from liability to the criminal laws of his country, or had sufficient moral sense or intellectual capacity to be subjected like ordinary men to her mandates and her penalties.

The value of the medical evidence you must estimate for yourselves. You are yourselves the ultimate judges on this

\* The authorities referred to and read are *Freeman v. The People*, 4 Denio, 9; *Willis v. The People*, 32 *New York Reports*, 715; *O'Brien v. The People*, 36 *Id.* 276.

point. And it is upon your own judgment as founded upon the evidence, that the result must finally depend. The opinions of medical men may have a certain value in enlightening your minds in regard to it, but it should by no means induce you to discard your own careful and deliberate judgment upon the whole testimony.

And of the existence of this fact of insanity, as of all other facts in the case, you are, as counsel have been careful to impress upon you, yourselves, and not the court, to be the final and intelligent judges. The court has no disposition to invade your province on that subject; but this will not, I presume, induce you to discard or reject any suggestions, coming from what quarter they may, that may seem to you to have any intrinsic force; or to aid you in arriving at an intelligent judgment upon the case. None of us are so wise that we can safely afford to reject adventitious aid on a matter so important; and in a matter of life and death, the responsibilities are too great to induce us to attempt to be too self-reliant.

Another defence set up on this occasion is, that Hiscock was the seducer of Cole's wife, and therefore justly liable to his vengeance. No doubt such a defence, if established, would strongly appeal to your sympathies, being regarded in some quarters as no more than a just vindication of marital rights, and the only efficient mode of protecting the purity and inviolability of the marriage bed.

But we are not here to administer sympathy—but to execute justice; to carry into effect the laws of the land; to enforce the solemn mandates, and not to nullify or relax its positive commands by misplaced sympathy or morbid clemency.

If our duty is clear, we forswear ourselves if we do not perform it. I have taken a general oath faithfully to perform the duties of my office; you have taken a special oath, well and truly to try, and true deliverance make between the People of the State of New York and George W. Cole, and a true verdict render according to the evidence, so help you God.

This duty we must discharge at whatever hazard; whether painful or agreeable, neither manhood, nor honor, the restraints of conscience, nor the solemn mandates of the law allow us to decline its performance or to hesitate at its execution.

Many laws may not be in precise accordance with our

views of policy, or even of strict justice, yet it would lead to the utmost confusion and injustice should we refuse to execute them. If we are dissatisfied, we should apply at the proper time to the proper forum for their amendment, or seek to avert their excessive rigor by an appeal to executive clemency.

Certainly it is to be regretted, if further legal enactments could be of any avail to restrain the unholy passions and devilish acts of the seducer and adulterer, that they have not heretofore been made. But the wisdom and efficiency of such enactments have been questioned. It is enough for us to know that we must administer the law as it is, and we have no right to usurp legislative power and apply to a past transaction laws of our own creation. The injustice and unconstitutionality of such a proceeding would be manifest, and the gravest objections to it exist. Let us content ourselves with administering the law as we find it in our own appointed sphere of duty. Then shall we have consciences void of offence toward all men, and the happy consciousness that in the spirit of our oaths and in conformity with the obligations which rest upon us, we have, as faithful and law-abiding citizens, executed the laws of the land.

But there are several reasons why you cannot give effect to this defence :

1st The adultery is not in proof. It has not been established by the evidence. If that evidence has been improperly excluded, the responsibility for that error is with the court, and its correction belongs to another forum, and may be accomplished under the exceptions taken by the defendant to the decisions of the court. The statements of the prisoner are not evidence of that fact. They were not called for with any view to make them evidence for such a purpose. Their object was to illustrate the state of mind of the prisoner and to show a premeditated design on his part. Being perfectly legitimate for such a purpose and offered with that view, and direct evidence of adultery having been excluded by the court, they are not competent testimony to prove the adultery because they are not offered nor received with that view, and because there is no pretence that the defendant had personal knowledge on this subject which would enable him to give primary or admissible evidence with reference to it.



There might be a state of facts, for example, if a husband should rush from his own bed-room, with a knife or dagger in his hand, red, and dripping with blood, where his statement that he had just slain the adulterer in the very perpetration of a domestic wrong, contemporaneous with the act and consistent with and explanatory of the surrounding circumstances, might be so interwoven and blended with the transaction as to allow it to be received, in connection with other evidence, as original or primary proof of the facts themselves. But here the declarations of the prisoner do not cover such a case—are not pretended to be applicable to such a transaction, and are shown by the other proof in the case to refer to occasions considerably removed in point of time from that which is the subject of your present investigation.

The confessions, or alleged confessions, of the wife, do not prove it. They were not admitted for such a purpose, and are not to have that effect. Their introduction was permitted, not as furnishing evidence of the fact themselves, but as communications made to the husband, and which were calculated more or less to operate upon his mind, and influence his conduct, and to enable you, in the light of subsequent events, to judge how far they did so operate, and to determine to what extent, the knowledge or information of these facts was calculated to explain and to mitigate, or to justify the homicide subsequently committed. As interpreting the prisoner's subsequent conduct, as throwing light upon the state of his mind, they are admissible and proper to be considered; as furnishing evidence to you in this case of the commission of the adultery, they were not allowed to be introduced and are not proper to be considered.

Hence, if you acquit the defendant upon that ground, you acquit him upon a ground not established by the evidence.

It may be that the deceased was not guilty of this offence. He has not had any opportunity to try that question, and his lips are now sealed in death. We are not, therefore, in a condition to say on which side, upon a fair trial, the preponderance of the evidence would be.

It is suggested that no case has ever occurred in which this evidence has ever been ignored by a jury. That is not the question. It is not necessary for us to inquire whether former juries have or have not violated their oaths by accept-

ing as evidence facts which have not been proved. It is a dangerous and inadmissible proceeding in a court of justice. We stand upon the recorded evidence, and no other. Whatever may be our suspicions, we have no right to give way to them unless they are supported by the evidence in the case.

Whatever I may suspect or you may conjecture outside of the range of the proved or admitted facts, we cannot justify ourselves to our God or our country otherwise than by rendering a verdict according to the evidence. Neither the pressure of sympathy, nor the alleged hardship of the case, nor the sophistry of counsel, should allow us to take any other course.

But it is said that the prisoner was informed of facts tending to fix upon the deceased this invasion of his marital rights, and that oppressed by the crushing weight of such a disclosure he rushed to the vindication of his marriage bed under a transport of passion which every honorable heart will justify—which the law will excuse if it does not applaud, and which jurors who appreciate the importance of maintaining the purity of the marriage relation cannot fail to recognize and sustain.

But neither is this the just nor the legal view of the case. It is only in the heat of passion—in the uncontrollable resentment occasioned by the discovery of his domestic dishonor, or by surprising the parties in the actual commission of the adulterous intercourse, or under the sudden influence of a state of circumstances almost equivalent to personal observation of such a transaction, that the husband is permitted to be the summary avenger of his domestic wrongs.

He is not at liberty, after his passions have had time to cool and the tempest of excited feeling to subside, to stalk abroad, seek out the unconscious and unprepared victim of his resentment, and without the intervention of the forms of law or the judgment of his peers, become the self-appointed avenger of his own wrongs or vindicator of the violated majesty of the law.

The law must be left to maintain its own dignity and to enforce its own decrees through the constituted tribunals of its own creation, and has not in any just or legal sense commissioned the defendant to the discharge of the duties of this high office.

In this case, the adulterer—if adulterer he was—was not detected by the husband in the actual commission of his crime, nor under circumstances from which its then very recent perpetration, so far as the evidence discloses, could have been fairly inferred. The period of the adultery—if adultery there was—was long since passed. The knowledge or information of its commission had been communicated to the prisoner several days, at least two or three days before, and a sufficient time, in the judgment of the law, had elapsed for the passions to cool, and for reason so far to regain her undisputed or real sway as to forbid individual vengeance, and to pronounce the act of premeditated killing—if such it was—the crime of murder.

True it is, as I have already informed you, if, notwithstanding this lapse of time, the crushing weight of this domestic tragedy had driven the prisoner's mind to absolute distraction and dethroned the reason of the husband, he is permitted to find immunity from punishment in the mental alienation with which he was thus overwhelmed; but if he had the possession of his senses, the exercise of his reason, and was in a situation to appreciate the quality of his acts, he stands responsible before the law for having unlawfully taken the life of his fellow-man, and must abide the stern rigor with which she maintains her violated majesty.

Neither, therefore, in the alleged adultery, for which the deceased was slain, because the adultery has not been proved, and would not have been a defence if it had been, considering the period of its alleged commission, nor in the crushing and overwhelming weight with which the evidence of his domestic honor and of the deceased as its alleged author, was brought home to the knowledge of the defendant, can the prisoner find exemption from this homicide. He must find it, if he find it at all, in that dethronement of reason, if it actually occurred, which exempts every insane person, however great would otherwise be his crime, and however awful would otherwise be the attending circumstances, from responsibility for conduct to which his mind never gave a willing and intelligent assent.

But there is another aspect of the case to which I feel bound to call your attention, because there is a possible view of the evidence which you may feel at liberty to take which

will reduce the grade of this offence from murder in the first degree to murder in the second degree, or manslaughter in one of its various degrees, and more particularly to manslaughter in the third degree, the punishment of which crime is imprisonment in the State prison for the terms which I have before mentioned.

I have already stated to you that murder in the second degree embraced all other kinds of murder than murder in the first degree, and though not well defined in the statute, might fairly be supposed to include that kind of murder, which was not characterized by that degree of enormity or of premeditation, or, perhaps, of premeditation at all, other than unintentional, which might be supposed to constitute murder in the first degree, and to be justly punishable by the forfeiture of life.

If, therefore, your view of the circumstances of this case shall enable you to take this more lenient view of the prisoner to which I have just referred, you may find him guilty of murder in the second degree.

Again, if your view of the evidence, acting under the responsibility of your oaths, shall enable you to take a still more lenient view of the evidence and to conclude that the intent of the prisoner was not to produce death, and that the homicide was committed not with premeditated design, but in the heat of a passion by the use of a deadly weapon, then it will be your duty to convict the prisoner of manslaughter in the third degree, the punishment of which crime is imprisonment in the State prison for a term of not less than one nor more than four years.

As heretofore stated, the radical distinction between murder and manslaughter is the presence or absence of a design or premeditated design to effect the death of the person killed. If you have rational doubt on that point, arising under the testimony and justly founded thereon, it is the benevolent intention and the positive injunction of the law, that you should allow it to operate in favor of the prisoner. And if in the dispassionate judgment which you shall give this case, you shall come to the conclusion that though you believe the prisoner to have been driven to the borders of distraction, yet not actually to have entered its domain, and therefore to hold him responsible for a violation of the law, and yet to have

been urged to the terrible catastrophe with which this domestic drama has terminated, by the crushing conviction of his domestic dishonor, and with a force, and precipitation and pressure, which deprived his act of homicide of that premeditation which stamps it with the legal ingredient of malice aforethought, you are at liberty, under such circumstances, to negative the element of premeditated design; and finding the act committed in the sudden heat of passion and by the use of a dangerous weapon, to declare the legal consequence of such a killing by pronouncing him guilty of manslaughter in the third degree.

The responsibility of determining the facts by which the grade of the offence is to be measured, is of course with you, and not with me, and you must determine it under a solemn sense of the important consequences which rest upon your decision.

It has been suggested that a verdict of this character, finding the defendant guilty of an offence of a less grade than that charged in the indictment, will not be acceptable to the prisoner, who desires a full acquittal or a conviction of murder in the first degree.

Allow me to say, gentlemen, the preferences or wishes of the prisoner on this point should not, in my opinion, affect your action one way or the other. You have a higher duty to discharge than either to please or to offend the prisoner or the people. You are to find a true verdict, according to the facts established before you. You are to declare it without fear or favor, and without reference to the wishes of either side.

You are not to be precipitated into a verdict of absolute acquittal, because a conviction of murder in the first degree would be too severe to correspond with your views of duty. You are not to be withheld from a verdict of partial conviction if a verdict of greater or less severity shall not faithfully record your conclusions from the evidence. You must find a verdict founded entirely upon your own view of the testimony as it has engraven itself upon your minds.

You should also be careful not to be carried by feelings of sympathy beyond the boundaries of duty. You may justly and properly entertain a feeling of respect and gratitude to General Cole for his gallant services during the war; but when he appears in this tribunal and is summoned to its bar to

answer for crime, he is like all other men similarly situated, to be tried by the law and the evidence. Neither gratitude for his military services, nor sympathy for his unmerited sufferings, nor regret for his domestic calamities, can annul or impair the stern requirements of duty.

Nor, on the other hand, must you be betrayed by an abhorrence for a homicide, appearing, if you so regard it on the first look at the transaction, to be without justification or excuse, into a rash and precipitate verdict of conviction. The case has various aspects, all of which you must consider, and no more conscientious or imperative duty is demanded of a jury than to keep their judgment in suspense till every fact is carefully examined and its just weight and bearing faithfully determined.

You find in the prisoner perhaps an individual laboring under melancholy, more or less, whether or not it has attained that intense and aggravated character expressed by the *melancholia* of the medical profession. You find him, it may be, materially changed in his disposition and temperament, his tastes and his habits, from what they were at a former period of his life. Life, it may be, has lost for him many of its charms, and bodily ailments and injuries have not only subjected him to much pain and suffering, but have so destroyed or impaired his health and his constitution as to render life a burden rather than a blessing.

All these things, under proper circumstances, and on a proper occasion, may make him a fit subject for your consideration and sympathies. But this is not the period when you are to seek their indulgence, at least if they operate so far as to distract your mind from the performance of a sterner and higher duty. Not, indeed, that you are to forget that you are human, or that you can be expected altogether to divest yourselves of those feelings and sensibilities which are implanted in every manly and generous heart. But that you are to be careful not to be led by them away from the performance of duty, or into forgetfulness of the stern obligations which rest upon you as impartial arbiters of the prisoner's destiny.

True indeed, if under the influence of evidence you conclude the prisoner's reason was dethroned, and he was not at the time of this transaction an intelligent agent, having not the power of mental discrimination between right and wrong

in regard to the particular transaction which you are undertaking to investigate, he must stand acquitted before you upon the ground of criminal irresponsibility. But if he had this power of mental discrimination and could distinguish in regard to the moral qualities of his conduct, then, notwithstanding your pity for the man and your sympathy for the sufferer, you must condemn the criminal, and especially you must not be led aside from the path of duty by a recollection of the severe rupture which has taken place in his domestic relations, unless the deceased is proved to have been connected therewith, and in some sense the author thereof, so as justly to call down upon himself, within the limits of the law, the just vengeance of an injured husband. These injuries, at least as intelligence of them was communicated to him, were of the most heart-rending character, and must of necessity excite the ardent sympathy of every feeling heart.

It may be difficult, perhaps impossible, wholly to divest ourselves of these feelings, but we shall fail to meet the stern and inexorable necessities of this hour if we allow them to turn us aside from the path which the law has appointed for us to tread.

That path is the path of duty, that duty is to find a verdict according to the law and the evidence; and whether it enjoins upon you the agreeable task of pronouncing a verdict of acquittal because the evidence fails to satisfy you beyond a reasonable doubt of the guilt of the prisoner, or of his responsibility for crime, or the painful one of pronouncing a verdict of conviction because the evidence satisfies you beyond a reasonable doubt of the prisoner's guilt and responsibility for crime, you will, I doubt not, acquit yourselves like men, and without fear or favor, without partiality or prejudice, discharge the solemn and responsible trust which the law has imposed upon you on this occasion.

In this confidence I commit this case into your hands for your final deliberation and verdict.

In relation to the specific points submitted by the counsel for the defence, and asked to be made part of his charge, the Judge said that he should charge the law upon the subject of insanity to be as laid down in the authorities above referred to.

After the delivery of the charge, Mr. Brady said that with

reference to what had been said by the Judge upon the question of finding the accused guilty of manslaughter, he (Mr. B.) desired to say in behalf of the prisoner, that in the judgment of his counsel, there is no rational or possible view by which the offence can be demonstrated manslaughter, and that the prisoner declines to accept the offer of that sympathy that would induce a verdict for that offence, and that the prisoner would rather die than be sent to State Prison.

Messrs. Parker and Beach made exceptions to some portions of the Judge's charge.

About five o'clock the jury came into court, when Judge Hogeboom addressed them as follows:

Gentlemen—Have you agreed upon a verdict?

Foreman—No, sir.

Judge Hogeboom—I have a note from you, in which you request to have further information with reference to that portion of the charge which relates to insane impulse and ungovernable frenzy and the rules of law governing the same. I designed to express myself with sufficient fullness and with all the clearness and perspicuity with which I was able to do upon those subjects. I will restate or further comment on these points, that the foundation of all responsibility for crime is sanity or soundness of mind; that is, a sane mind in the sense in which I explained it to you in your original charge—the possession of reason, ability to discriminate between right and wrong in regard to the particular transaction, a degree of consciousness and intelligence that enables a party to appreciate the quality and nature of the act in which he is engaged; to be aware that it was wrong, if it was wrong, a crime; that he was committing an offence against the laws of his country. If his mind was in such a situation, he was, in my opinion, and as defined in the cases to which I have referred, subject to those laws, responsible for their violation and to be punished if he did violate them. That is substantially the test in regard to both of those species of offences to which your attention has been called. An insane impulse leaving the mind incapable of exertion, holding the individual incapable of exercising his mind, so far as I have defined it to you, exempts him from responsibility, and if under the influence of such a want of mind the prisoner commits the act, whether you call it an insane impulse or anything else, it exempts him from



responsibility. Mere impulse, whether you call it irresponsible impulse or not, does not excuse, if it be the impulse of excited passion arising from revenge, from resentment, from intention to do an act which is wrong or a crime, and the prisoner is aware of it. Whether he is impelled to it by peculiarities of temperament, by a nervous disposition, by excited feeling, or anything of that sort, will not excuse him from responsibility.

If there is the consciousness that he is committing a crime against the laws of his country, there is, in my opinion, **no impulse that can excuse him from responsibility.** But if this impulse arises from a defect of reason, so that it cannot control the exercise of his mental powers, if he is bereft of that power in the sense which I have alluded to, and this crime is committed in such a condition and without the ability to control himself from such a course, he is in such a condition as excuses him from responsibility. The question, after all, is whether he has his mental powers and the ability to exercise them to such a degree as makes him conscious, at the time, of the nature of the act in which he was engaged. He must not give way to unholy passions, to excited feelings, to a disposition for revenge or resentment, because it is just these feelings that the law punishes, and makes him responsible for them. Men must curb and restrain their passions. But if he is bereft of the mental power to reason upon the subject and understand the nature of the act in which he is engaged, then the law relieves him from responsibility.

If he acts from ungovernable frenzy, it must be the frenzy of madness or mental alienation, and not of excited and inflamed passions. If a man has sufficient consciousness of the nature of the act in which he is engaged, to know that he is doing wrong, and violating the laws of his country, and yet gives way to the feeling of resentment or revenge, and gratifies it at the expense of his consciousness that he is committing a crime, whether that frenzy is of the highest and almost irresponsible degree or not, he must be held responsible. But if this is the frenzy of mental alienation so that he cannot control the powers of his mind, and is incapable of appreciating the quality of his act, or to understand that he is violating the laws of his country, or doing a thing that is morally wrong, then he is exempt from responsibility. It is very difficult to

define these matters with absolute precision. I can only refer you to the general rule laid down in the cases I laid before you in my charge to you, and I read from them intentionally for the express purpose of defining the rules by which you are to be guided and to explain the circumstances which exempts a person charged with crime from the responsibility of that crime.

I do not know that I can do anything which will inform you in any greater degree of what constitutes that degree of insanity or mental alienation which excuses a party from criminal responsibility. The party is never responsible for defect of reason; it is a providential dispensation which relieves him from the imputation of crime, because it is not the act of a free, intelligent and conscious mind. I think that every one is bound to control his passions and feelings. If he has the power of thought and ability to reason, he must be held responsible to the laws of his country, and not give way to unholy passions or excited feelings, or wicked resentments or revenge. On these questions you must be satisfied.

Mr. Brady—If there be any doubt the benefit of it goes to the prisoner.

Judge Hogeboom—That doubt goes to the prisoner, if it be that kind of rational error upon the evidence of doubt which commends itself to the rational mind, applying itself to the facts of the case. It is not the mere possibility of innocence that should justify you in finding a verdict of acquittal. The question is whether on your considering the case as rational men, you believe beyond a rational doubt, a fair, reasonable doubt, commending itself to your understanding, that the party is guilty and criminally responsible under the rules I laid down, you must find him guilty. If you do not thus believe, if you have a rational doubt upon this subject as thus understood and interpreted, you are to give the prisoner the benefit of that doubt and render a verdict of acquittal.

The jury then again retired, and a large number of spectators left for their homes. About eight o'clock the jury were supplied with supper, and at ten o'clock, it being evident that they would not soon come to any definite determination, they were furnished with blankets.

At 2:30 o'clock, Dec. 5, the jury were still out.

At 11:15 Saturday afternoon, Dec. 5, the jury came into

Court again. The foreman, Mr. Lamb, stated that one of the jury desired further advice upon the question of insane impulse, and also upon the particular point whether if when Cole left the Delavan House he was of sound mind, but upon reaching the Stanwix Hall and confronting Hiscock he became seized with uncontrollable frenzy, and thus leave a doubt as to the sanity of the prisoner at the moment of the commission of the homicide, whether in such case the prisoner was entitled to the benefit of that doubt.

Judge Hogeboom, in response, stated that he did not know as he could charge differently than he had before upon the subject now presented. But he would repeat, that if the prisoner had such possession of his mental faculties at the moment of the homicide as to know right from wrong as to that particular act, then he is to be held responsible. If a doubt exists, such a rational and well grounded doubt as arises from a clear conception of the case, and not from mere sympathy for the prisoner, then he is entitled to the benefit of that doubt.

The Judge then read, as illustrating his views upon the subject of insanity, from the cases of the *People v. Kinney*, 31 New York Reports; and *The People v. O'Brien*, 36 New York Reports, 276.

The foreman of the jury then asked the Court if the jury should happen to stand eleven to one in regard to a verdict, whether the one who differed from the eleven should pay any attention to such difference, or be influenced in his action by their opinion.

Judge Hogeboom replied that he should not allow the course of the majority to influence him to precipitate a verdict—he should go according to his conscientious convictions from the evidence, the arguments, and the law as laid down by the Court.

Messrs. Parker and Tremain, respectively, submitted a point upon the subject of insanity, to both of which the Judge assented, and charged the jury in accordance with them.

The Judge then announced that he would send for the jury at three o'clock, *p. m.*, and that if they had not then agreed he would adjourn the Court till Monday morning.

At three o'clock the jury again came into Court, when Judge Hogeboom asked them if they called for further instructions.

Mr. Lamb, the foreman, said:

We ask the indulgence of your honor and this court while I explain the unfortunate dilemma in which we are placed, by no fault of our own, as I hold, but by the fault of the Court and counsel all around. You have permitted one man in this trial to take his seat as a juror who now confesses that he had prejudged this case, had a settled conviction on his mind and his opinion formed all through this trial. I claim that it is unjust to keep us here under these circumstances, with no prospect of agreement. Your honor will pardon me for any rude expressions, but I wish my sense to be conveyed in such a way that I may be understood.

Judge Hogeboom said he did not know that any remarks of this kind against one of his fellow jurors should be received, as there was no way of correcting the difficulty complained of. He had given very full instructions, and must either discharge them or send them back for further deliberation. He would like to know whether there was any probability of arriving at a verdict.

The foreman said that in this anxiety to reach their homes they might not be as entirely impartial in their opinions as they should, but they really thought there was no possibility of their agreeing.

Judge Hogeboom said he should be glad to relieve them upon that subject if he thought it was right to do so. His impression was that they ought to make a further effort to agree. He should be sorry if any juror had gone into the panel with any preconceived opinion—especially any settled one—in regard to the merits of the case. All persons were capable of laying aside former impressions to a great extent, and he thought that jurors should be able to lay aside any previous impressions, and inspired by the oath taken render a verdict according to the evidence as presented. He would not say that any juror should surrender his solemn convictions in reference to the merits of this case, and would not say that the individual juror may not stand up against the body of his fellows; but he would say that the juror should feel some degree of doubt from that very fact whether he had not conceived an impression in regard to the case which might possibly be amiss. In other words, he should feel it right to say that such a juror should address himself fairly to the testimony, of considering the subject in the most careful, deliberate and consci-

entious manner, and if he should feel that possibly he may have taken a mistaken view of the case there would be no impropriety in yielding his convictions to the majority; but not to do so if he has a conscientious conviction upon his own mind that he is right.

In that case the juror must take the responsibility upon himself. If this jury was thus divided, the eleven jurors should not feel entirely certain that they are right. It sometimes happens that the eleven are wrong, and one is right. It was the duty of all the jurors to re-examine the testimony and the conclusions at which they had arrived. The Judge said he was sorry to keep them in confinement, but he did not think that after the time that had been taken, the expenditure that had been made, and the inevitable expenses of the trials had, that the time had arrived for their separation without proper effort to secure a verdict. He would, therefore, remand them to their rooms until Monday, at ten o'clock.

Mr. J. D. Brooks, one of the jurors, at this point rose and said they wished to impress upon the Court that no ill-feeling existed among them; but there was the confessed fact that immediately upon the commission of the homicide, certain jurors had formed an unqualified opinion, and had held this opinion until that moment. He would ask whether they, as candid jurors, were to fight constantly against that opinion which had been formed eighteen months ago. The moment they entered into their room their hope of agreement was precisely the same as now. They had used every argument which could be used to persuade these men, and had heard every argument which could be used by them. To satisfy themselves that they were going right, they had twice visited the Court for further explanations, and had returned to their rooms and deliberated until the very last moment. Yet the dissenting jurors remained firm to their convictions, and said they would remain there one year before they would change them. He would ask if they should go back to their rooms under these circumstances. "Those jurors could not be changed by the evidence, or by the arguments of the counsel, or by the charge of the Judge, and is it in our weak power to change them now? If we go back to our room, we go as mere tools to repeat what has already transpired." (Applause.)

Judge Hogeboom said that there should be no applause, and addressing Mr. Brooks, remarked that he regretted very much the condition in which they were placed, but the extraordinary character of the case, the magnitude of the case, the responsible character of the trial, the great questions involved in it, and the inconvenience to jurors, witnesses, counsel and other parties that would result from a disagreement of the jury, compelled him to make every effort to bring about an agreement if possible. He should therefore remand them to their rooms and adjourn the Court until half-past ten (Monday) morning.

#### ACQUITTAL OF THE PRISONER.

The Court was opened at ten minutes before eleven o'clock, on Monday, December 8th. The room was densely crowded with spectators, among the number a few ladies.

The Jury came into court in a few minutes, and, by direction of the Court, the Clerk called the roll of jurors, each responding as his name was called.

Clerk:—Gentlemen of the Jury, have you agreed upon a verdict?

Foreman, P. W. Lamb:—We have not, and desire to submit a question to the court.

Mr. Lamb then handed the question to Judge Hogeboom, who, after reading it, read it aloud as follows:

"If the jury believe that the prisoner was sane just before the homicide, and also just after, and if the jury are equally unable to decide whether he was sane or insane at the instant of the homicide, should such a doubt go to the benefit of the prisoner or not?"

Judge Hogeboom replied that the jury must be satisfied beyond reasonable doubt, as to the condition of the mind of the prisoner at the time of the commission of the homicide. If they entertained a reasonable doubt, founded on the evidence, then the prisoner was entitled to the benefit of the doubt.

The foreman of the jury then consulted with Messrs. Dickerman and Deitz, the two dissenting jurors, and in a few seconds he announced to the Court that he was prepared to give the verdict of the jury.

Judge Hogeboom then directed the Clerk to call the roll, each juror responding as before.

Clerk—"Gentlemen of the Jury, have you agreed upon your verdict?"

Foreman—"Not Guilty!"

Immediately upon this announcement there was a most extraordinary scene in the court-room. Nearly every person arose and most of those outside the bar mounted the seats, and from the audience there went up deafening cheers. The Judge made vigorous demonstrations with his gavel and the officers cried lustily for "order!" but the auditors who sympathized with the prisoner—and from the manifestations we should judge the feeling was quite universal—could not be restrained from giving full expression to their satisfaction at the verdict. They threw their hats upwards, waved their handkerchiefs, and continued cheering for upwards of two minutes. While these proceedings were in progress outside the bar, the counsel of Cole clustered about him shaking his hands in the most cordial manner, and congratulating him upon his acquittal. He was also greeted by scores of others, and for upwards of five minutes was surrounded by persons striving to grasp his hands and tender their congratulations.

While this exciting scene was in progress, the Clerk responded to the verdict of the jury as follows :

"Gentlemen of the jury, hearken unto your verdict as the Court hath recorded it; you say you find the prisoner at the bar 'not guilty!' and so you all say."

The words of the Clerk could not be heard by the jurors, owing to the confusion, but so the verdict was recorded, and George W. Cole was a free man !

#### DEATH OF GEORGE W. COLE.

Gen. George W. Cole died at Mara, New Mexico, on the 11th of December, 1875, of pneumonia. Gen. Cole's name is still well remembered as the hero of a domestic tragedy which resulted in his killing in one of the corridors of Stanwix Hall, on January 4th, 1867, H. L. Hiscock, of Syracuse, then a member of the Constitutional Convention sitting in this city. The cause of the murder was Hiscock's alleged indignities offered to Cole's wife. The ball from Cole's pistol pierced the brain of Hiscock, who died instantly. Cole was tried twice on the charge of murder, his first trial taking place before Judge Ingraham, in the Court of Oyer and Terminer, at Albany, beginning April 21, and ending May 7th, 1868, when the jury announced the impossibility of their agreeing upon a verdict. The second trial also took place in Albany, and was concluded on December 7th, 1868, when the jury found a verdict of 'not guilty,' basing their verdict on the insanity of the prisoner at the moment he fired the fatal shot. Gen. Cole was a native of New York, and was born near Lodi, in 1828.—*Albany Evening Times*.

COUNT DE BOCARMÉ.

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Count Hippolyte Visart de Bocarmé, and his wife the Countess, were put on their trial before the Court of Assizes at Mons, in Belgium, for the murder of Gustavus Fougnyes, the latter's brother, in November, 1850. The Count belonged to one of the most distinguished families of Belgium. His father, Julian Bocarmé, married a niece of the Austrian General Chastelit, and was an official of the Dutch government of Java, where Hippolyte, his only son, was born. He was nursed by a Malay woman, and grew up among that people, whose savage and perfidious character he seems to have imbibed. Count Julian afterward returned to Belgium, and lived for some time at Tournay. Here, however, he enjoyed no rest; his love for adventure drove him abroad; and, accompanied by his son, he wandered to North America, where he founded a colony on the banks of the Ohio. Young Hippolyte remained here until he was eighteen years old, when he returned to Europe, and soon after married a lady, named Lydia Fougnyes, from Peruwetz. His young wife was well educated, with superior talents, possessing a vivid imagination, and cherishing a passionate admiration of the French romance-writers. She sustained personal relations with some of them, among others with Balzac, who often passed several weeks in the summer at Bury Castle in the Tournay, which the young couple had made their residence. She also wrote some few novels, but they are quite insignificant. Such a character was by no means adapted to influence a man like Count Hippolyte, who had brought with him from abroad the instinct of a half-savage. He had also been disappointed in getting less money with her than he expected. He abandoned himself to his unbridled passions, kept mistresses, and became the terror of his acquaintances, and the distress of his relations. In the village where he lived, he was hated



most intensely on account of his severe and cruel disposition.

The dissipated life of the Count produced a total disorder of his finances. He was deeply in debt, and had squandered a large part of his estate. His only hope was in the inheritance of his brother-in-law, Gustavus Fournies. This person gave no promise of a long life. His health was bad, and by a fall from a horse he had lost a leg. A deep distrust of his brother-in-law, no one knows why, seems to have been early rooted in his mind. Although he was ardently attached to his sister, and made her the heir of his whole property, he seldom went to Bury, and often said that he was afraid to eat anything there until it had been tasted by his brother-in-law. He was perfectly aware that he was anxious to get hold of his property, and wished nothing so much as his death. It is even said that he once expressed the suspicion that Count Hippolyte had poisoned his father.

Towards the close of last year Fournies had made up his mind to marry the Countess de Grandmetz. The wedding day was fixed, the bridal gifts were purchased, the marriage contract was to have been signed on the 23d of November, when Fournies, although advised to the contrary by his intended, who foreboded some bad end, came to the unlucky determination to invite, in person, his sister and brother-in-law to the approaching wedding. The Countess announced the expected visit to her husband on the 20th, who replied, "I will do the business for him to-day." Gustavus Fournies arrived at the castle that day, and in the evening he was dead.

On the next morning the report was spread in the village that Fournies had died suddenly at the castle, but the people did not hesitate to speak of Count Bocarmé as the murderer. The universal prevalence of the rumor led the magistrate to institute an inquiry. The official was at first very circumspect and lenient towards the Count; but the embarrassment of the accused, with his contradictory answers, at length aroused his suspicions, which soon took a more definite shape. Among other things, the examining judge discovered a deep bite on the hand of the Count, evidently made by a man, and which he could not satisfactorily account for. He accordingly had the Count and Countess taken into custody and sent to Tournay.

The physicians unanimously testified that Fougnyes came to his death by a corrosive poison, probably sulphuric acid, which he had been forced to swallow. But for a long time the bite on the hand was the only circumstance to direct suspicion against the Count. Both the Countess and himself strenuously denied the charge, asserting that Fougnyes must have poisoned himself in their house, since they found him dead in the dining-room, and the servants could throw no light on the matter. At length, Emerence, the French chambermaid of the Countess, made some important disclosures. She stated that on the morning of November 20, the Count sent his servant to a village several miles off, and she took his place in waiting on the table. When it began to grow dark she asked whether she should bring in lights ; but the Count directed her to go to the nursery up-stairs, where were the children and the only two waiting-maids then in the house. One of the children wishing for some milk, a maid went down into the kitchen to get it. She was no sooner there than she heard a half-stifled cry in the dining-room: "Murder! assassination! Hippolyte! Hippolyte!" She rushed to the door of the kitchen, which was separated by one room from the dining-room, and saw the Countess come out and shut the door after her. She imperiously ordered the maid to return up stairs. As the latter passed the window of the dining-room she thought she heard the death rattle of a dying person. She afterwards met the Count and Countess on the stairs, on the way to the parlor. They both looked pale and disturbed, and said nothing. Some time after they went down into the dining-room again, and on the sight of the body broke out into loud cries before the servants, who were now called in.

Soon after the first examination, a chemical laboratory was discovered in the castle. The workman who was employed in it testified that he had been engaged there for fourteen days in succession ; that the Count often came in the middle of the night to learn the progress of the work ; and that the Countess also had visited the room to see how the "succession water" was getting on. The principal ingredient in the chemical operation was tobacco ; and the physician also discovered that the poison was effected by nicotine.

Another fact came to the knowledge of the judge by a

lucky accident. On the first report of the crime, the newspapers stated, among other things, that the Count was in Brussels during the summer, when he purchased a new carriage with white linings—he himself wearing fur in spite of the advanced season. These circumstances recalled to a professor of chemistry in Ghent the recollection of a stranger who had repeatedly visited him in the spring to consult him in regard to the preparation of nicotine. He called himself Beirand. The professor stated this to the court, and recognized him as the pretended Beirand. He also delivered letters to the court which had been written to him by Beirand, giving an account of the progress of his operations. The last of these letters concluded as follows: "It has succeeded at last; the trial has been made, and the effect is frightful." The letters are in the handwriting of the Countess. She at last confessed, after obstinately denying for a long time; but she threw the blame on her husband, who she said compelled her by threats of death not to prevent the crime.

After a trial of several days, the jury found the Count guilty, and acquitted the Countess. It appeared that Bocarmé forcibly poured the nicotine down his brother-in-law's throat, and that his wife assisted in the operation. The acquittal of the Countess gave general dissatisfaction. Her husband appealed from the verdict; but the appeal was dismissed.

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TRIAL OF DR. COOLIDGE.

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The trial of Dr. Valorus P. Coolidge, for the murder of Edward Mathews, took place the 14th of March, 1848, at Augusta, in Maine, before Chief Justice Whitman, and two associate justices.

The respectable position in society held by the prisoner, and the singular atrocity of the crime with which he was charged, excited unusual interest; so much so, that to accommodate the large number desirous of hearing the trial, the court was induced to transfer its sittings from the court-house to a very capacious church, which was filled as soon as the doors were thrown open.

The trial lasted an entire week, and the number of witnesses examined amounted to about seventy. From this voluminous mass of testimony it appeared that Dr. Coolidge was a physician in the town of Waterville, in a very successful practice; notwithstanding which he was always in need of money, and borrowed it wherever he could, and commonly at usurious interest. More than a dozen witnesses stated that he was indebted to them for money lent, from fifty to three or four hundred dollars, and that about the time of Mathews' death, he offered \$500 for the use of \$2,000 for six months, and even for a still shorter time.

It further appeared that the prisoner knew that Mathews had gone to Brighton with a drove of cattle; that he made repeated inquiries of the amount Mathews would receive, and requested the barkeeper of the house where Mathews boarded, to let him know when Mathews returned. Mathews arrived on Saturday, the 25th of March, but Coolidge did not see him until the following Wednesday. There were several private interviews between him and Coolidge on Wednesday and

Thursday. In the afternoon of the latter day, he received \$1500 from the Taconic Bank, and after eight o'clock at night, remarked that it was time to go to Dr. Coolidge's office, and was seen to go in that direction. The next morning he was found dead, in the cellar in which Dr. Coolidge kept his fuel. Two deep cuts were found on his head, some black and blue spots about his throat, and his boots were clean, though the streets were muddy at the time.

At the Coroner's inquest, Coolidge was examined with other witnesses, and stated that Mathews had been at his office twice the day before, for the purpose of borrowing \$200, which he wanted to make up the sum of \$2,000 he had promised to raise. The last time it was a little after eight o'clock at night when he received the money—of which one hundred dollars was in a note he had received of W. R. Doe. Denied that he had written any note to Mathews the day before, or at any time.

There was then a *post-mortem* examination of the body, when Coolidge, remarking that they could not tell whether the wounds in the head were sufficient to produce death, unless the scalp was turned back, cut and turned back the scalp. It being then proposed to examine the stomach, it was taken out by Coolidge, and the contents emptied into a basin. They smelt strong of brandy. A few minutes afterwards he remarked to a bystander that they had better be removed, as they might scent the room. They were accordingly taken out, and after remaining awhile behind an old hogshead, were locked up in an ice-house; whence they were taken, on the following Monday, and delivered to Professor Loomis for examination. When Coolidge was asked, on Friday evening, if the contents of the stomach had not better be examined, he inquired of the witness if they had been preserved; and on being told that they had, he replied, they had lain so long, nothing could be ascertained from them.

These contents were carefully analyzed by Professor Loomis, and found to contain prussic acid by several tests. Several physicians, who were present at the post-mortem examination, also testified that the liver, lungs, spleen and brain, indicated the action of prussic acid, and that they perceived its peculiar odor.

The medical men further thought that the wounds in the

head not having been attended with inflammation, were probably given after death, with a view of preventing suspicion of the real cause.

From these indications of the presence of prussic acid, and other circumstances, Coolidge was now strongly suspected of the murder, and was accordingly taken into custody. It was then found, and it was proved in court, that, on the 17th of September, he had written to Boston for an ounce of hydrocyanic (prussic) acid, "as strong as it can be," which he received: and that, on the 19th of September, he also wrote to Hallowell for an ounce of the same acid, "as strong as it is made." This acid, when used in medicine, is commonly diluted to 2 per cent. The pure acid is seldom called for. Dr. Coolidge previously had by him some of the diluted acid.

On Monday, after the murder, a boy found in the top of Coolidge's sleigh, a gold watch and chain, which were proved to be the same as those worn by Mathews the Thursday before. They were wrapped up in white paper, which was of the same description as some found in Coolidge's office.

Coolidge endeavored to persuade two witnesses to conceal from the coroner's inquest that he wished to borrow money of them—having himself stated to the jury that, so far from wishing to borrow money, he had *lent* Mathews \$200, and to one witness he proposed to give fifty dollars, and declared he was a ruined man, when he could not succeed.

Many minor circumstances corroborated the inference from the preceding strong facts, but the testimony of Thomas Flint removed every shadow of doubt of the prisoner's guilt.

The witness was a student in Dr. Coolidge's office, and he stated that, about nine o'clock on Thursday night, when he was going to bed, at his boarding-house, he met Dr. Coolidge, who requested the witness to go to his office with him. When there, he said, "I am going to reveal to you a secret which involves my life; that cursed little Edward Mathews came in here, and went to take a glass of brandy and fell down dead; he now lies in the other room. I thumped him on the head to make people believe he was murdered." After some consultation, they decided on carrying the body to the cellar, to remain there until it was discovered the next day. The next day he found in the office a note from Coolidge, requesting him to sweep the office carefully, which he did, and removed some

signs of blood. About noon he saw Coolidge charge Mathews with \$200 lent. Coolidge handed him a sum of money, requesting him to keep it, saying the jury might ask to see his pocket book, and he did not know but there was too much money in it. After the examination of the body, Coolidge told the witness, while in the office together, that there was \$1,000 under the carpet, beneath the iron safe, which he wished witness to take care of. In the evening the prisoner seemed to be greatly agitated. He took the money he had given witness, selected some of the bills, put them into his pocket book, and gave the witness others from the pocket book. The money was put in one of a number of jugs in the office, and the prisoner requested the witness to sleep with him that night. The next day he seemed unwilling to receive back the money he had given to the witness, but afterwards went to the office, broke the jug and threw the notes into the stove. He stated that a letter produced to the coroner's jury (from Coolidge to Mathews, requesting the latter to call at his office on Thursday night), he had withdrawn "from the bag" on Friday night and destroyed. He told the witness there was a bottle at his office that had contained prussic acid, which ought to be destroyed, and that the bottle which had come from Boston should be filled up, for some of it had been used. He also desired that the brandy bottle should be rinsed, and the water in the sink thrown out. He requested the witness to take the watch from his sleigh, and throw it into the river. Witness slept with the prisoner the two or three following nights, and when he did not, believes that Mr. Baker did. The witness admitted that when before the grand jury, he did not state anything about the money, the watch, or washing out the stains from the floor. He had partly disclosed to his father the facts stated to-day, and also to Mr. Baker. General Simons, his father, had encouraged him to testify in the case.

In consequence of this variance in Flint's testimony, the counsel for the prisoner endeavored to invalidate it; the jury, however, after a deliberation of twenty-four hours, returned a verdict of guilty, and the prisoner was sentenced to be hanged, after the expiration of a year spent in hard labor. The law of Maine, by a seeming compromise between those who would abolish, and those who would retain capital punishment, has thus postponed the execution of the sentence of death, that the

person convicted may profit by subsequent evidence, so as, if not to establish his innocence, to raise sufficient doubts of his guilt to obtain a pardon ; or he may effect his escape by force or artifice, or finally escape ignominious punishment by disease or suicide.

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## REMARKABLE ESCAPE FROM PRISON.

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[Two French gentlemen, Messrs. De Latude and D'Alegre, were imprisoned in the Bastille,\* at the instance of that implacable woman, Madame De Pompadour. An intimation having been given them that they had no hope of release, De Latude resolved to escape, or perish in the attempt. We give his story in his own words:]

To any man who had the least notion of the situation of the Bastille—its extent, its towers, its discipline, and the incredible precautions which despotism had multiplied, more surely to chain its victims—the mere idea of escaping from it would appear the effect of insanity, and would inspire nothing but pity for a wretch so devoid of sense as to dare to conceive it. A moment's reflection would suffice to show that it was hopeless to attempt an escape by the gates. Every physical impossibility was united to render this impracticable. We had no resource but by the outside. There was in our chamber a fireplace, the chimney of which came out in the extreme height of the tower ; it was full of gratings and bars of iron, which, in several parts of it, scarcely left a free passage for the smoke. Should we be able to get to the top of the tower, we should have below us a precipice of a great height, at the bottom of which was a fosse, or broad ditch, surrounded by a very lofty wall, to be got over.

\* In July, 1789, the walls of this celebrated prison were leveled with the ground. One of the prisoners, Count de Lorges, had been confined thirty-two years, and excited great public sympathy. The great key of the outer gate was presented by La Fayette to General Washington.



We were without assistance, without tools, without materials, constantly watched, night and day, and guarded, besides, by a great number of sentinels, who surrounded the outworks of the Bastille. So many obstacles, so many dangers, did not deter me. I hinted my scheme to my comrade; he thought me a madman, and relapsed into despair. I was obliged alone to digest my plan, to anticipate the frightful hosts of difficulties which opposed its execution, and find the means of remedying them all. To accomplish our object we had to climb to the top of the chimney, notwithstanding the many iron gratings which were opposed to our ascent; and then, in order to descend from the top of the tower into the fosse, we required a ladder of eighty feet at least; and another ladder, necessarily of wood, to get out of the fosse. If I could get these materials I must hide them from every eye, must work without noise, deceive all our spies, and this for months together. Now for the details of my operations. Our first object was to find a place of concealment for our tools and materials, in case we should be so fortunate as to procure any. By dint of reflecting on the subject, a thought struck me which appeared to me a very happy one. I had occupied several different chambers in the Bastille, and had always observed, whenever the chambers either above or below me were inhabited, that I heard very distinctly any noise made in either.

On the present occasion I heard all the movements of the prisoner above, but not of him below; nevertheless, I felt confident there was a prisoner there. I conjectured, at last, that there might be a double floor, with a space between each. I took the following means to satisfy myself on the point. There was in the Bastille a chapel, at which, by special favor of Monsieur Berryer, we, as well as the prisoner below, in No. 3, were allowed to hear mass. I resolved to take advantage, when mass should be over, of a moment before the prisoner below was locked up, to take a view of his chamber. I pointed out to D'Alegre how he was to assist me. I told him to put his tooth-pick case in his pocket-handkerchief, and when we should be on the second floor, by pulling out his pocket-handkerchief, to let his tooth-pick case fall all the way down stairs, and then to request the turnkey to go and pick it up. My little plan succeeded. While the turnkey was

going after the tooth-pick case, I ran quickly up to No. 3. I drew back the bolt of the door, I examined the height of the chamber from the floor, and found it about ten feet six inches. I shut the door, and from this room to ours I counted thirty-two steps, measured the height of one of them, and, making my calculation, I came to the conclusion that there must be, between the floor of our chamber and the ceiling of that below, a space of five feet six inches, which could not be filled up either by stone or wood, on account of their weight. As soon as we were shut up and bolted in, I embraced D'Alegre with delight.

"My friend," said I, "patience and courage—we are saved! We can hide our ropes and materials—that is all that is wanted! We are saved!"

"What!" said he, "have you not given up your dreams? Ropes and materials!—where are they, and where shall we get them?"

"Ropes," said I, "why we have more than we want; that trunk (showing him mine) contains a thousand feet of them."

Looking at me steadfastly, he replied, "My good friend, endeavor to regain your senses, and to calm the frenzy which agitates you. I know the contents of your trunk; there is not a single inch of rope in it."

"Ay" said I, "but have I not a large stock of linen—twelve dozen of shirts, a great number of napkins, stockings, night-caps, and other things—will they not supply us? We will unravel them, and we shall have ropes enough."

"But how are we to extract the iron gratings of our chimney?" said D'Alegre; "where are we to get the materials for the wooden ladder which we shall want?—where obtain tools for all these works?—we cannot create things."

"My friend," I replied, "it is genius which creates, and we have that which despair gives, that will guide our hands; once more, we are saved!"

We had a flat table, supported by iron legs; we gave them an edge by rubbing them on the tiled floor: of the steel of our tinder-box we made, in less than two hours, a good knife, with which we formed two handles to these iron legs: the principal use of these was to force out the gratings of our chimney. In the evening, the daily inspection being over, with these iron legs we raised some tiles of our floor, and, by

digging for about six hours, we discovered that our conjectures were well founded, and that there was a vacant space between the floor and ceiling of about four feet. We replaced the tiles so that they scarcely appeared to have been raised. This done, we ripped the seams and hems of two shirts, and drew out the threads of them one by one. These we tied together, and wound them on a number of small balls, which we afterwards rewound on two larger balls, each of which was composed of fifty threads, sixty feet long. We twisted these, and formed a cord of about fifty-five feet long, and with it constructed a rope ladder, which was intended to support us aloft, while we drew out of the chimney the bars and spikes of iron with which it was armed. This was the most painful and troublesome of our labors, and cost us six months' toil, the recollection of which makes one shudder.

We could only work by bending our bodies in the most painful positions: an hour at a time was all we could bear, and we never came down without hands covered with blood. The iron bars were fastened with an extremely hard mortar, which we had no means of softening but by blowing water with our mouths into the holes as we worked them. Judge what this work must have been, when we were well pleased if, in a whole night, we had worked away an eighth of an inch of this mortar. When we got a bar out, we replaced it in its holes, that, when we were inspected, the deficiency might not appear, and so as to enable us to take all of them out at once, should we be in a situation to escape.

After six months of this obstinate and cruel work, we applied ourselves to the wooden ladder which was necessary to mount from the fosse upon the parapet, and from thence into the governor's garden. This ladder required to be twenty feet long. We devoted to this part of our work nearly all our fuel; it consisted of round logs about eighteen or twenty inches long. We found we should want blocks or pulleys, and several other things for which a saw was indispensable. I made one with an iron candlestick, by means of half of the steel of the tinder-box from which I had made the knife. With this piece of the steel, the saw, and the iron legs of our table, we reduced the size of our logs; we made tenons and mortices in them, to join them one into the other, with two holes through each, and two joints, to prevent swagging. We made the

ladder with only one upright, through which we put twenty rounds, each round being fifteen inches long. The upright was three inches diameter, so that each round projected, clear, six inches on each side of the upright. To every piece of which the ladder was composed, the proper round of each joint was tied with a string to enable us to put it together readily in the dark. As we completed each piece we concealed it between the two floors. With the tools we had made, we completed the tools of our workshop. We had a pair of compasses, a square, a carpenter's rule, &c. &c., and hid them in our magazine.

De Latude goes on to detail the precautions which he and his companion in misfortune took, in case any of the jailers should be listening, to give feigned names for everything they used in their work, and states the names used by them for each article. He then proceeds with his narrative:—

These things being complete, we set about our principal ladder, which was to be at least eighty feet long. We began by unravelling our linen; shirts, napkins, nightcaps, stockings, drawers, pocket-handkerchiefs—every thing which could supply thread or silk. As we made a ball we concealed it in Polyphemus, (the name they called the hiding-place,) and when we had a sufficient quantity, we employed a whole night in twisting it into rope; and I defy a ropemaker to have done it better. The upper part of the building of the Bastille overhangs three or four feet. This would necessarily occasion our ladder to wave and swing about as we came down it, enough to turn the strongest head. To obviate this, and to prevent our fall, we made a second rope 160 feet long. This rope was to be reeved through a kind of double block without sheaves, in case the person descending should be suspended in the air without being able to get down lower. Besides these, we made several other ropes of shorter lengths, to fasten our ladder to a cannon, and for other unforeseen occasions. When all these ropes were finished, we measured them—they amounted to 1400 feet. We then made 208 rounds for the rope and wooden ladders. To prevent the noise which the rounds would make against our wall during the descent, we gave them coverings formed of pieces of the linings of our morning-gowns, of our waistcoats, and our under-waistcoats. In all these preparations we employed eighteen months, but still they were incomplete.

We had provided means to get to the top of the tower, to get into and out of the fosse: two more were wanting—one to climb up on the parapet; from the parapet into the governor's garden; from thence to get down into the fosse of the Port St. Antoine; but the parapet which we had to cross was always well furnished with sentinels. We might fix on a dark and rainy night, when the sentinels did not go their rounds, and escape by those means; but it might rain when we climbed our chimney, and might clear up at the very moment when we arrived at the parapet: we should then meet with the chief of the rounds, who constantly inspected the parapet, and he being always provided with lights, it would be impossible to conceal ourselves, and we should be inevitably ruined. The other plan increased our labors, but was the less dangerous of the two. It consisted in making a way through the wall which separated the fosse of the Bastille from that of the Port St. Antoine.

I considered that in the numerous floods, during which the Seine had filled this fosse, the water must have injured the mortar, and rendered it less difficult, and so we should be enabled to break a passage through the wall. For this purpose we should require an angur to make holes in the mortar, so as to insert the points of the two iron bars to be taken out of our chimney, and with them force out the stones, and so make our way through. Accordingly we made an angur with one of the feet of our bedsteads, and fastened a handle to it in the form of a cross. We fixed on Wednesday, the 25th February, 1756, for our flight. The river had overflowed its banks: there were four feet of water in the fosse of the Bastille, as well as in that of the Port St. Antoine, by which we hoped to effect our deliverance. I filled a leathern portmantau with a change of clothes for both, in case we were so fortunate as to escape.

Dinner was scarcely over when we set up our great ladder of ropes, that is, we put the rounds to it, and hid it under our beds; then we arranged our wooden ladder in three pieces. We put our iron bars in their cases to prevent their making a noise; and we packed up our bottle of usquebaugh to warm us, and restore our strength during our work in the water, up to the neck, for nine hours. These precautions taken, we waited till our supper was brought up. I first got up the

chimney. I had the rheumatism in my left arm, but I thought little of the pain; I soon experienced one much more severe. I had taken none of the precautions used by chimney-sweepers. I was nearly choked by the soot; and having no guards on my knees and elbows, they were so excoriated that the blood ran down on my legs and hands. As soon as I got to the top of the chimney, I let down a piece of twine to D'Alegre; to this he attached the end of the rope to which our portmanteau was fastened. I drew it up, unfastened it, and threw it on the platform of the Bastille. In the same way we hoisted up the wooden ladder, the two iron bars, and all our other articles; we finished by the ladder of ropes, the end of which I allowed to hang down to aid D'Alegre in getting up, while I held the upper part by means of a large wooden peg which we had prepared on purpose. I passed it through the cord, and placed it across the funnel of the chimney. By these means my companion avoided suffering what I did. This done, I came down from the top of the chimney, where I had been in a very painful position, and both of us were on the platform of the Bastille. We now arranged our different articles. We began by making a roll of our ladder of ropes, of about four feet diameter, and one thick. We rolled it to the tower called *La Tour du Treson*, which appeared to us the most favorable for our descent. We fastened one end of the ladder of ropes to a piece of cannon, and then lowered it down the wall; then we fastened the block, and passed the rope of one hundred and sixty feet long through it. This I tied round my body, and D'Alegre slackened it as I went down. Notwithstanding this precaution, I swung about in the air at every step I made. Judge what my situation was, when one shudders at the recital of it. At length, I landed without accident in the fosse.—Immediately, D'Alegre lowered my portmanteau and other things. I found a little spot uncovered by water, on which I put them.—Then my companion followed my example; but he had an advantage which I had not had, for I held the ladder for him with all my strength, which greatly prevented its swinging. It did not rain; and we heard the sentinel marching at about four toises\* distance, and we were, therefore, forced to give up our plan of escaping by the

\* A toise is six and a half feet.

parapet and the governor's garden. We resolved to use our iron bars. We crossed the fosse straight over to the wall which divides it from the Port St. Antoine, and went to work sturdily.—Just at this point there was a small ditch about six feet broad and one deep, which increased the depth of the water. Elsewhere it was about up to our middles; here, to our armpits. It had thawed only a few days, so that the water had yet floating ice in it; we were nine hours in it, exhausted by fatigue, and benumbed with the cold. We had hardly begun our work before the chief of the watch came round with his lantern, which cast a light on the place we were in. We had no alternative but to put our heads under water as he passed, which was every half hour.

At length, after nine hours of incessant alarm and exertion, after having worked out the stones one by one, we succeeded in making, in a wall four feet six inches thick, a hole sufficiently wide, and we both crept through. We were giving way to our transports, when we fell into a danger which we had not foreseen, and which had nearly been fatal to both of us. In crossing the fosse St. Antoine, to get into the road to Bercy, we fell into the aqueduct which was in the middle. The aqueduct had ten feet of water over our heads, and two feet of mud on the side. D'Alegre fell on me, and had nearly thrown me down. Had that misfortune happened we were lost, for we had not strength enough left to get up again, and we must have smothered. Finding myself laid hold of by D'Alegre, I gave him a blow with my fist, which made him let go, and, at the same instant, throwing myself forward, I got out of the aqueduct. I then felt for D'Alegre, and getting hold of his hair, drew him to me. We were soon out of the fosse, and just as the clock struck five, we were on the high road. Penetrated by the same feeling, we threw ourselves into each other's arms, and after a long embrace, we fell on our knees, to offer thanks to the Almighty, who had snatched us from so many dangers.

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